

United States
Circuit Court of Appeals
For the Ninth Circuit.

J. W. WILLIS,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of the
District of Montana.

FILED

SEP 28 1921

F. D. MONCKTON,
CLERK.

United States
Circuit Court of Appeals
For the Ninth Circuit.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys of Record.

FRANK HUNTER, Esq., of Miles City, Montana,
and Messrs. McINTIRE and MURPHY, and
LESTER H. LOBLE, Esq., of Helena, Mon-
tana,

For Defendant and Plaintiff in Error.

J. L. SLATTERY, Esq., U. S. Attorney, RONALD
HIGGINS, Esq., Assistant U. S. Attorney, and
W. H. MEIGS, Esq., Assistant U. S. Attorney,
of Helena, Montana,

For Plaintiff and Defendant in Error.

[1*]

In the District Court of the United States in and
for the District of Montana.

No. 3815.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

J. W. WILLIS,
Defendant.

BE IT REMEMBERED, that on May 10th, 1921,
an information was duly filed herein against the
defendant, in the words and figures following, to
wit:

*Page-number appearing at foot of page of original certified Transcript
of Record.

In the District Court of the United States, District
of Montana.

Information.

United States of America,
District of Montana,—ss.

BE IT REMEMBERED, that George F. Shelton, United States Attorney for the District of Montana, who for the said United States, in its behalf, prosecutes in his own person, comes here into the District Court of the United States for the District of Montana, on the 10th day of May, 1921, in the February, 1921, term of said court, held at the city of Butte, in the State and District of Montana, and for the United States of America, gives the Court to understand and be informed:

That on or about the 19th day of March, 1921, one J. W. Willis, whose true name is to the informant unknown, in the State and District of Montana, and within the jurisdiction of this Court, at No. 511 Pacific Avenue, in the City of Miles City, in the County of Custer, in said State and District of Montana, did then and there maintain a [2] common nuisance, that is to say, a building where intoxicating liquor, to wit, whiskey, was kept and sold, in violation of Title II of the National Prohibition Act, the maintaining of said common nuisance being then and there prohibited and unlawful; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

GEORGE F. SHELTON,
U. S. Attorney, District of Montana.

United States of America,
District of Montana,—ss.

George F. Shelton, being first duly sworn, on oath deposes and says.

That he is a duly appointed, qualified and acting United States Attorney for the District of Montana, and as such makes this verification to the foregoing information; that he knows the contents thereof, and that the same is true to the best of his knowledge, information and belief.

GEORGE F. SHELTON.

Subscribed and sworn to before me this 10th day of May, 1921.

[Seal]

H. H. WALKER,
Deputy Clerk, U. S. District Court, District of Montana.

Filed May 10, 1921. C. R. Garlow, Clerk. [3]

Thereafter, on June 15, 1921, defendant was duly called for arraignment, the minute entry thereof being as follows, to wit:

No. 3815.

UNITED STATES

vs.

J. W. WILLIS.

Arraignment.

Defendant was duly called for arraignment this day, whereupon Frank Hunter, Esq., asked that his

name be entered as attorney for defendant, and it was so ordered. Thereupon counsel was granted leave to file motion to quash, which was set for hearing at 10 A. M. to-morrow.

Thereafter, on June 16, 1921, the plea of defendant was duly entered herein, the minute entry thereof being as follows, to wit:

No. 3815.

UNITED STATES

vs.

J. W. WILLIS.

Plea.

This cause came on regularly for hearing this day on motions to quash the information and suppress certain evidence, J. L. Slattery, Esq., U. S. Attorney, appearing for plaintiff, and Frank Hunter, Esq., appearing for defendant. Thereupon the motions were argued and submitted, whereupon the Court, after due consideration, ordered that said motions be denied. Thereupon a plea of not guilty was entered on behalf of said defendant, the case to be tried in July.

Thereafter, on July 12th, 1921, the case came on regularly for trial, the minute entry thereof being as follows, to wit:

No. 3815.

UNITED STATES

vs.

J. W. WILLIS.

Trial.

This cause came on regularly for trial this day, defendant present with his attorney, Frank Hunter, Esq., and J. L. Slattery, Esq., U. S. Attorney, appearing for plaintiff. Thereupon, on motion, the name of H. G. Murphy, Esq., was entered as additional [4] counsel for defendant. Thereupon the following were duly impanelled, accepted and sworn as a jury to try the cause, viz.: James M. Forbes, L. T. Hauberg, Chas. Oliver, F. A. Rodgers, Jacob Fischer, J. W. E. Clark, John Adami, George Thompson, Thomas Smelser, John W. Fulton, Alex Erickson and Owen Evans. Thereupon Walter Prochnow, Geo. W. Farr, Walter Holmes, Geo. H. Estes, O. M. Wilkinson, Martin Golden, H. M. Dengler, C. S. Hanna and T. R. Gordon were sworn and examined as witnesses for the plaintiff and three bottles containing whiskey were introduced, whereupon plaintiff rested. Thereupon J. W. Willis, Richard Bernhart, Melvin Drinkhart, J. English, Elizabeth Drake and Frank Hunter were sworn and examined as witnesses for defendant, whereupon defendant rested. Thereupon Berl

Henderson was sworn and examined and T. R. Gordon recalled in rebuttal, whereupon the evidence being closed, after the arguments of counsel and the instructions of the Court, to certain of which defendant then and there excepted and exception noted, the jury retired to consider of their verdict. Thereafter the jury returned into court with its verdict, which was duly received by the Court, read and filed, and by the jury acknowledged to be its true verdict as follows, to wit: "We, the jury in the above-entitled cause, find the defendant guilty in manner and form as charged in the information on file herein. Jacob Fischer, Foreman." Thereupon on motion of defendant, time for sentence was ordered continued until 9:30 A. M. to-morrow.

Thereafter, on July 12, 1921, the verdict of the jury was filed herein, being in the words and figures following, to wit:

In the District Court of the United States, District
of Montana.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

J. W. WILLIS,

Defendant.

Verdict.

We, the jury in the above-entitled cause, find the

defendant guilty in manner and form as charged in the information on file herein.

JACOB FISCHER,

Foreman.

Filed July 12, 1921. C. R. Garlow, Clerk. [5]

Thereafter, on July 13, 1921, judgment was duly rendered and entered herein as follows, to wit:

No. 3815.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

J. W. WILLIS,

Defendant.

Judgment.

The United States Attorney with the defendant and his counsel present in court.

The defendant was thereupon duly informed by the Court of the nature of the charge against him as appears in the information herein, and of his arraignment, and plea of not guilty, and of his trial and the verdict of the jury of guilty as charged.

And the defendant was then asked if he had any legal cause to show why judgment should not be pronounced against him, to which he replied that he had none, and no sufficient cause being shown or appearing to the Court, thereupon the Court rendered its judgment as follows, to wit:

That whereas the said defendant having been duly convicted in this court of the offense of un-

lawfully maintaining a common nuisance, that is to say, a building where intoxicating liquor, to wit, whiskey, was kept and sold in violation of the National Prohibition Act, committed on the 19th day of March, 1921, at Miles City, in the State and District of Montana, as charged in the information herein:

It is therefore CONSIDERED, ORDERED, AND ADJUDGED that for said offense, you, the said J. W. Willis, be confined and imprisoned in the County Jail at Helena, Montana, for the term of Eight Months, and that you pay a fine of Two Hundred Fifty Dollars, and costs taxed at \$471.81, and that you be confined in said County Jail until said fine is paid or you are otherwise discharged according to law.

Judgment rendered and entered July 13, 1921.

C. R. GARLOW,

Clerk. [6]

Thereafter, on July 30th, 1921, petition for writ of error was duly filed herein, in the words and figures following, to wit:

In the District Court of the United States, for the
District of Montana.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

J. W. WILLIS,

Defendant.

Petition for Writ of Error.

To the Honorable GEORGE M. BOURQUIN,
United States District Judge of the District
Court Aforesaid:

Now comes J. W. Willis by his attorneys and respectfully shows that heretofore on the 12th day of July, 1921, he was convicted in the above-entitled court and cause by a jury for an alleged violation of the national prohibition law, and thereafter on the 13th day of July, 1921, judgment was by said Court rendered and entered against him upon the verdict of said jury.

And your petitioner feeling himself aggrieved by the said verdict and judgment entered herein as aforesaid herewith petitions this Honorable Court for an order allowing him to prosecute a writ of error to the Circuit Court of Appeals of the United States for the Ninth Circuit under and in pursuance of the laws of the United States in said cases made and provided.

WHEREFORE, the premises considered, your petitioner prays that a writ of error do issue that an appeal in this behalf to the United States Circuit Court of Appeals for the Ninth Circuit sitting at the city of San Francisco, in the State of California, for the correction of the errors complained of and herewith assigned, be allowed and that an order be made fixing the amount of security to be given by petitioner in error, conditioned as the law directs, and upon giving such bond as may be required, that all further [7] proceedings may be suspended

until the determination of said writ of error by the Circuit Court of Appeals of the United States for the Ninth Circuit, as aforesaid, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the said United States Circuit Court of Appeals aforesaid, and your petitioner will ever pray.

J. W. WILLIS,

Petitioner in Error.

LESTER H. LOBLE,

FRANK HUNTER,

McINTIRE and MURPHY,

Attorneys for Petitioner in Error.

Filed July 30, 1921. C. R. Garlow, Clerk. [8]

Thereafter, on July 30, 1921, assignment of errors was filed herein, in the words and figures following, to wit:

In the District Court of the United States, for the District of Montana.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

J. W. WILLIS,

Defendant.

Assignment of Errors.

Comes now J. W. Willis, the defendant above named, by his attorneys, and in connection with his petition for a writ of error makes, presents and files this, his assignment of errors, and by way

thereof he avers and alleges that in the record and proceedings, and in the judgment of said District Court in said cause there is manifest error in this, to wit:

I.

That the evidence in said cause is not sufficient as a matter of law to warrant the verdict of the jury or the judgment of the Court against this defendant.

II.

That there is no substantial evidence in said cause upon which to base the verdict of the jury or the judgment of the Court as to this defendant.

III.

The Court erred in overruling defendant's objection to the testimony of the witness Berl Henderson given in rebuttal on the trial of said cause.

IV.

The Court erred in denying defendant's motion to strike the testimony of the witness Henderson given in rebuttal on the trial of said cause. [9]

V.

The Court erred in giving to the jury that part of its instructions which are as follows, to wit:

"In respect to the law involved in this case, the famous Volstead Act, passed by Congress to carry out the provision for national prohibition, it is a Constitutional amendment, and it is just as much a law as any other law upon our statutes. We all know that no law ever written is being violated or has been violated to a greater degree than the Volstead Law is

now; but that is only the more reason why it must be enforced, as long as it is the law, with diligence and faithfulness, so that this tendency to violate this law may not, as it inevitably will if its violations are condoned or permitted to continue unpunished, tend to encourage the violation of other laws; because, when people discover that one law may be violated with impunity, that courts and juries are impotent to enforce the law, there is a general tendency to transgress other laws, a failure to give due observance to law, and, as a result, a breaking down of the morale. In other words, if a man may break the law and escape the consequences of his act, people say, 'What is the use? If one set of men can violate one law and escape, what is the use of the rest of us observing any law?' So it leads to the violation of other laws, and a breakdown of the morale of the people. Another thing in reference to this Volstead Act: People comment upon the fact that with many people it is not a popular law; many people are opposed to its spirit. They argue about this way,—that if they are drawn in the jury box in a case involving a prosecution for the violation of its provisions, they will return a verdict of acquittal; that they are against the spirit and operation of the law; that it is nor right, so they will fail to enforce the law, and will permit the offender to escape. They argue to themselves further: 'If I am accused of a violation of this law, it will only

be necessary for me to swear to any sort of a fictitious defense to give the jury a plausible excuse in order to secure my acquittal.'

Gentlemen of the jury, that is a thing that wants to be suppressed as not well founded. I will say that in the Federal Court I have not found it to have any basis of truth, so far as juries are concerned. Of cases that have come up in this court, there have been as many convictions that were merited under this law, as in any other case. Why do I say this to you? Not to say that this defendant is to be convicted; not at all. I merely wish to impress upon you the seriousness of your duty in every one of these cases as in any other question that may be brought before you, and that you give to it the same serious, thoughtful and honest consideration; that you execute and carry out your duty, your obligation and your oath, whatever the verdict may be."

to which portion of said instructions the defendant made the following objections and exceptions, to wit:

"Mr. MURPHY.—If your Honor please, the defendant desires [10] to except to that portion of your Honor's instructions in which you commented upon the Volstead law, and particularly that portion in which you state that that law is being violated more than any other law now is. Defendant further desires to except to your Honor's comments on the Volstead Law to the effect that violations of it are breaking

down the morale of the people and the general observance of law, and that there is a spirit not to enforce that law.”

VI.

The Court erred in overruling defendant’s objection and exception to that portion of its charge to the jury which is set forth at length in Specifications of Error numbered 5 herein.

VII.

The Court erred in giving to the jury that part of its instructions which are as follows, to wit:

“Ask yourselves this: whether Smith, who took them there and introduced Henderson and the others to the defendant in the first place, whether or not Smith was the agent of the defendant. Ask yourselves how these officers would find their way there if they were not taken there by someone who knew the liquor was there. Why did the defendant tolerate these men around there unless they were customers, whose patronage, at fifty cents a drink, was a profitable one.” to which portion of said instruction defendant made the following exceptions, to wit:

“We further except to that portion of your charge wherein you comment upon the fact and mention the fact that Vic Smith was the agent of the defendant, because I do not believe the same was warranted or justified by the evidence.”

VIII.

The Court erred in overruling defendant’s exceptions and objections to that portion of its charge to

the jury which is set forth in Specifications of Error numbered 7 herein.

IX.

The Court erred in rendering and entering judgment herein for the reason that there is no sufficient evidence herein to justify or sustain said judgment.

X.

The Court erred in rendering and entering the judgment [11] herein for the reason that there is no evidence to justify or sustain the verdict of the jury.

XI.

The Court erred in rendering and entering judgment herein for the reason that the verdict herein is contrary to law.

XII.

The Court erred in rendering and entering judgment herein for the reason that the same is contrary to law.

XIII.

The Court erred in rendering and entering judgment herein against defendant.

WHEREFORE and for divers other reasons appearing in the record and proceedings herein said plaintiff in error prays that the judgment of the District Court in favor of the said United States and against said defendant be reversed and set aside and for such other relief as may be just.

Dated July 30, 1921.

LESTER H. LOBLE,
FRANK HUNTER,
McINTIRE & MURPHY,
Attorneys for Plaintiff in Error, Defendant in Court
Below.

Filed July 30, 1921. C. R. Garlow, Clerk. [12]

Thereafter, on July 30, 1921, order allowing writ of error was filed herein, as follows, to wit:

In the District Court of the United States for the
District of Montana.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

J. W. WILLIS,

Defendant.

Order Allowing Writ of Error and Fixing Bond.

Upon motion of McIntire and Murphy, the attorneys for the above-named defendant, and upon the filing of a petition for a writ of error and an assignment of errors, IT IS HEREBY ORDERED that writ of error be and the same is hereby allowed to have reviewed in the United States Circuit Court of Appeals for the Ninth Circuit, the judgment heretofore entered herein and that a transcript of the records, proceedings and papers in this cause duly authenticated be sent to the said United States Cir-

cuit Court of Appeals for the Ninth Circuit and that the amount of the bond on said writ of error to be furnished by the said defendant be and the same is hereby fixed at the sum of 750.00 dollars (\$———), and upon due execution and approval of said bond the same shall amount as supersedeas herein pending proceedings upon said writ of error in said Circuit Court of Appeals.

Dated Helena, Montana, this 30th day of July, 1921.

BOURQUIN,

Judge.

Filed July 30, 1921. C. R. Garlow, Clerk. [13]

Thereafter, on July 30, 1921, bond on writ of error was filed herein, in the words and figures following, to wit:

In the District Court of the United States for the
District of Montana.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

J. W. WILLIS,

Defendant.

Bond.

KNOW ALL MEN BY THESE PRESENTS:
That we, J. W. Willis, as principal, and M. W. Milligan and Hugh R. Wells, of the City of Miles City, County of Custer, State and District of Montana, as sureties, are held and firmly bound to the

United States of America in the full and just sum of Seven Hundred Fifty Dollars (\$750.00), lawful money of the United States, to be paid to the said United States of America, for which payment, well and truly to be made, we bind ourselves, our executors, administrators, heirs and assigns jointly and severally by these presents.

Signed and sealed this 28th day of July, 1921.

WHEREAS, lately at a term of the District Court of the United States for the District of Montana sitting at Helena in said District in a suit pending in said court, in which the United States of America is plaintiff, and said J. W. Willis, defendant, being cause numbered 3815, in which the said defendant was charged with maintaining a nuisance in violation of the National Prohibition Act, and upon a trial thereof and a verdict of guilty was returned by a jury and judgment was rendered against said defendant by the Court that said defendant be imprisoned in the common jail of Lewis and Clark County, Montana, for a period of eight months and to pay a fine of Two Hundred and Fifty Dollars (\$250.00) [14] and the costs of suit, and the said J. W. Willis has or is about to file in said court his petition for and obtain a writ of error to the Circuit Court of Appeals of the United States for the Ninth Circuit and obtain a citation directed to the United States of America citing it to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit to be held in the city of San Francisco, in the State of California, according to law within thirty days from the date thereof.

NOW, THEREFORE, the condition of this obligation is such, that if the said J. W. Willis shall prosecute his writ of error to effect and pay the said judgment for said fine and costs and surrender himself in execution of the judgment heretofore entered herein against him and pay the costs and damages of the United States of America in said Circuit Court of Appeals for the Ninth Circuit, in the event he fails to make good his plea in said writ of error, or on a dismissal thereof, then the above obligation to be void; otherwise to remain in full force and effect.

J. W. WILLIS.

M. W. MILLIGAN.

HUGH R. WELLS. [15]

State of Montana,
County of Custer,—ss.

M. W. Milligan and Hugh R. Wells, being first duly sworn, each for himself, deposes and says: That he is a resident and freeholder within the county of Custer, State and District of Montana; that he is worth the amount of Seven Hundred Fifty Dollars (\$750.00), which is double the sum specified in the foregoing bond as the penalty thereof, over and above all his just debts and liabilities exclusive of property exempt from execution.

M. W. MILLIGAN.

HUGH R. WELLS.

Subscribed and sworn to before me this 28th day of July, 1921.

[Notarial Seal] FRANK HUNTER,
Notary Public for the State of Montana, Residing
at Miles City, Montana.

My commission expires March 29, 1922.

United States of America,
District of Montana,—ss.

I, _____ United States Commissioner, do
hereby approve the foregoing bond as to the suffi-
ciency of the sureties therein mentioned.

_____,
United States Commissioner, Miles City, Mon-
tana.

Filed July 30, 1921. C. R. Garlow, Clerk. [16]

Thereafter, on July 30, 1921, writ of error was
duly issued herein, which writ is hereto annexed
and is words and figures following, to wit:

In the District Court of the United States for the
District of Montana.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

J. W. WILLIS,

Defendant.

Writ of Error.

United States of America,—ss.

The President of the United States of America to the United States of America, Defendant in Error, and the Honorable JOHN L. SLATTERY, United States Attorney for the District of Montana, Its Attorney, GREETING:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in said District Court before you between the United States of America, plaintiff, and J. W. Willis, defendant, a manifest error has happened to the damage of said J. W. Willis as by his complaint and petition appears, and we being willing that error, if any hath been, should be corrected and full and speedy justice be done to the aforesaid parties in this behalf, do command you if judgment be therein given that under your seal you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ so that you have the same at San Francisco, in the State of California, where said court is sitting, within thirty days from the date hereof, in said Circuit Court of Appeals to be then and there held, and the records and proceedings aforesaid being inspected, the said United States Circuit Court of Appeals may cause further to be done therein according to law [17] what of right and according to the laws and customs of the United States should be done.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the United States, this 30th day of July, 1921.

[Seal] C. R. GARLOW,
Clerk of the United States District Court, District
of Montana. [18]

Answer of Court to Writ of Error.

The Answer of the Honorable, the District Judge of the United States for the District of Montana, to the foregoing writ:

The record and proceedings whereof mention is within made, with all things touching the same, I certify, under the seal of the said District Court of the United States, to the Honorable, the United States Circuit Court of Appeals for the Ninth Circuit, within mentioned, at the day and place within contained, in a certain schedule to this writ annexed, as within I am commanded.

By the Court.

[Seal]

C. R. GARLOW,
Clerk.

By H. H. Walker,
Deputy. [19]

[Endorsed]: No. 3815. U. S. District Court, District of Mont. United States of America vs. J. W. Willis, Deft. Writ of Error. Filed July 30th, 1921. C. R. Garlow, Clerk. [20]

Thereafter, on July 30, 1921, a citation on writ of error was duly issued herein, which citation is hereto attached and is in words and figures following, to wit:

In the District Court of the United States for the
District of Montana.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

J. W. WILLIS,

Defendant.

Citation on Writ of Error.

United States of America,—ss.

The President of the United States of America to the United States of America, Defendant in Error, and the Honorable JOHN L. SLATTERY, United States Attorney for the District of Montana, Its Attorney, GREETING:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be held in the city of San Francisco, State of California, within thirty days from the date of this writ, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the District of Montana, wherein J. W. Willis is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error as in said writ of error mentioned should not be corrected and why

speedy justice should not be done to the parties in that behalf.

Dated this 30th day of July, 1921.

BOURQUIN,
Judge. [21]

[Endorsed]: No. 3815. U. S. District Court, District of Montana. United States of America vs. J. W. Willis, Deft. Citation on Writ of Error. Filed Aug. 1st, 1921. C. R. Garlow, Clerk.

Due service of within Citation and receipt of copy thereof this 1st day of Aug., 1921, is hereby admitted and acknowledged.

JOHN L. SLATTERY,
U. S. Attorney for Montana. [22]

Thereafter, on August 11, 1921, bill of exceptions was duly signed, settled and allowed and filed herein, being in the words and figures following, to wit:

In the District Court of the United States for the
District of Montana.

THE UNITED STATES OF AMERICA
versus

J. W. WILLIS,

Defendant.

Bill of Exceptions.

Before Honorable GEORGE M. BOURQUIN,
Judge Presiding, and a Jury.

JOHN L. SLATTERY, Esq., United States District Attorney.

Messrs. McINTYRE & MURPHY (HOMER G. MURPHY, Esq., Appearing), Attorneys for Defendant.

This cause came on regularly for trial in the above-entitled court on the twelfth day of July, A. D. 1921, John L. Slattery, Esq., United States Attorney, appearing as counsel for the United States of America, and the defendant appearing in person and by his counsel above named, whereupon the following proceedings were had therein and evidence adduced, to wit:

A jury was duly impaneled, examined, accepted and sworn to try said cause, and the following proceedings were had: [23]

Testimony of Walter Procknow, for the Government.

WALTER PROCKNOW, a witness produced on behalf of the Government in the foregoing entitled cause, having been first duly sworn, was examined in chief by Mr. Slattery, and testified as follows, to wit:

Direct Examination.

(By Mr. SLATTERY.)

My name is Walter Procknow. I live at Miles City, Montana, in the District of Montana. During the month of March, of this year, I was an officer of Miles City. I held the office of patrolman throughout the month of March. I have lived in Miles City twelve years.

I have known the defendant since 1913, and I know where he was living, in Miles City, in the

(Testimony of Walter Procknow.)

month of March, of this year. I couldn't give the number of the place at which he was living, but it is a small, two-room, green house, just one story. I was in that house on the nineteenth of March, of this year. City Attorney Farr, Walter Holmes, Mr. English and Mayor Wilkinson were with me at that time. When I went to the house, I went to the back door. I did not see the defendant in there, but I saw him in that house on that evening. The time was eleven-thirty when I went to his house. Mr. Willis was in the house there then. There was a woman in there with him; I just can't recall her name. In the kitchen of the house, in the nature of bottles or liquors, we found some jugs, and there were quite a few empty bottles. In the kitchen we didn't find any empty bottles; I did not find any myself, personally, in the kitchen; I found some in the front room. We found about forty bottles, and we seized twelve quart bottles of whiskey with green river labels, Green River whiskey. I smelled some of the jugs and empty bottles on that occasion. They [24] led me to conclude that they had recently had liquor in them. On that occasion I arrested the defendant and this woman I found there. I picked up and took away two bottles of home brew.

Cross-examination.

(By Mr. MURPHY.)

There were about forty bottles, empty bottles, there, but we didn't take them all away. Those bottles were of all kinds. I found five empty jugs.

(Testimony of Walter Procknow.)

Q. And you said you found twelve quarts of Green River whiskey? A. Empty bottles.

Q. Empty bottles? A. Yes, sir.

Q. There was nothing in those?

A. In some there were; there was liquor in some of them.

Q. There had been, from the labels on them?

A. Yes, sir.

The WITNESS.—(Continuing.) I did not open those two bottles of home brew. I could tell what the contents of those were by the sediment on the bottom; I didn't open them or taste them. There were two rooms in that house; one room must be twelve by ten, and the other is about six by ten, I think.

Q. And how were those rooms furnished?

A. Why, there was, on the left hand side there was a little table with a telephone on it. On the right there was a writing desk and a trunk and a bed; that is the front room.

The WITNESS.—(Continuing.) In the back room there was a stove, and on the right hand of the stove there was a cupboard, and then there was a cot in the corner. There were some dishes and cooking utensils. Willis made that his home. As a matter of fact, Mr. Willis had just come back from California recently. The six by ten room was the one where the kitchen stove was. That wasn't a very [25] large table. That was Mr. Willis' home. I didn't notice any glassware around there. The lady was in the front room. As I came in there

(Testimony of Walter Procknow.)

she was dressed. I don't know whether she was going out. She went to jail with the rest of them.

Redirect Examination.

(By Mr. SLATTERY.)

I did not notice any evidence of the lady who was in there having been drinking. I didn't notice any liquor on the defendant at that time. Mr. Farr opened it; it was after a request was made of the defendant to open it. He did not comply with the request. It was locked. Upon breaking open the cupboard, there was found inside of it a five gallon jug with white liquid in it, moonshine whiskey in it. That was locked up in this cupboard in this kitchen. When I arrested them, I went away, but I left someone behind me; I left Mr. Holmes and Mr. Estes. Mr. Holmes was then an officer of the city of Miles City. I left a man by the name of Estes there. He was appointed an officer that evening.

Recross-examination.

(By Mr. MURPHY.)

Mr. Farr asked Mr. Willis to open the cupboard. I did not hear Mr. Willis at that time tell him that he did not have a key to that cupboard; that it belonged to a man by the name of Kimball, who had built it in there. He refused to open it. He did not say he didn't have the key; just said he wouldn't open it.

Witness excused. [26]

Testimony of George W. Farr, for the Government.

GEORGE W. FARR, a witness produced on behalf of the Government in the foregoing entitled cause, having been first duly sworn, was examined in chief by Mr. Slattery, and testified as follows, to wit:

Direct Examination.

(By Mr. SLATTERY.)

My name is George W. Farr; my business is attorney at law, and I have practised as such in the state of Montana about twenty-five years. I have lived at Miles City, Montana, the same length of time. In the month of March of this year, and particularly on the nineteenth of that month, I was an officer, and held the office of City Attorney of Miles City.

I am acquainted with the defendant, J. W. Willis, and I have known him about fifteen or twenty years. I know of the green house or building that he lives in at five hundred eleven Pacific Avenue, in the city of Miles City. I was in that house on the nineteenth of March, of this year. I went there about eleven-thirty; I went with Mr. Procknow, Mr. Holmes, Mayor Wilkinson and Mr. Estes to the rear door of the house. The defendant was there on that occasion. There was a woman in the house with him. I know the woman by sight, but I can't recall her name; I know her by reputation. The defendant appeared to have been drinking when I entered the house. I found in the house a large number of empty bottles—there were some not entirely empty—

(Testimony of George W. Farr.)

that is to say, there were a few drops or a spoonful in the bottom—and some empty jugs; I don't remember how many. I didn't count either the bottles or the jugs. I should judge there were forty or fifty bottles, all told; possibly more, and a half dozen to a dozen jugs. I noticed some of the labels on the empty bottles; some of them [27] had whiskey labels,—Green River, I recall that. There was some Scotch; yes, there were some Green River labels. I recall a cupboard in the rear room or kitchen of this place. We asked Mr. Willis to open the cupboard; it was locked. When we asked him to open it, I don't just recall what he said; in any event, he refused to open it. It was opened in his presence there. I think there were one or two bottles found in it; I can't say about the bottles, but there were several jugs, one of which was a glass jug, as I recall it. We were operating under a search-warrant; Mr. Procknow had the search-warrant. I don't remember whether that search-warrant was prepared in my office or not. Some of them were prepared in my office and some in the county attorney's office. After searching in the kitchen, I did or observed a little searching in the front room; I recall picking up a bottle off the floor that was about half full of liquor, and setting it on the table.

Mr. SLATTERY.—Q. I will hand you this bottle (handing article to the witness); can you identify that as the one which you picked up? I don't think that was the one, but it was about that full or a little more. It runs in my mind—

(Testimony of George W. Farr.)

The WITNESS.—(Continuing.) I don't recall whether there was a label on the one that I picked up. I recall when Mr. Procknow left the place; he had arrested both the defendant and this woman, but he turned them over, I believe to Mayor Wilkinson to take up to the police station. I did not make or watch a thorough search of the place; Mr. Holmes and Mr. Estes were left to continue the search.

Cross-examination.

(By Mr. MURPHY.)

The WITNESS.—I opened the cupboard in the kitchen; there were some jugs that were not in the cupboard. I don't recall, Mr. Murphy, how many jugs were in the cupboard, but there were [28] several; I didn't count them. Mr. Willis mentioned Frank Kimball's name in connection with the cupboard when I asked him to open it, but I don't think he said he didn't know anything about the cupboard. I don't remember his telling me that Frank Kimball built that cupboard during Mr. Willis' absence in California, but I think he mentioned Frank Kimball's name. He refused to open the cupboard; I don't recall of his giving any reason; as I recall it, he absolutely refused to open the cupboard without giving any reason. He did mention Frank Kimball's name, but I don't remember in what connection. I don't think that is the bottle I picked up off the floor (indicating bottle in counsel's hand).

Redirect Examination.

(By Mr. SLATTERY.)

The WITNESS.—I smelled of some of the jugs

(Testimony of George W. Farr.)

and some of these numerous bottles in the house on that occasion, and from the odor, I would say they contained some of that whiskey, or some of that moonshine, even at that time.

Recross-examination.

(By Mr. MURPHY.)

The WITNESS.—Those were both jugs and bottles, and from the smell, I would say that they had contained whiskey, and some of them had a very small quantity left,—that is, a few drops or a spoonful.

Mr. MURPHY.—Q. You couldn't tell, from smelling of those jugs, how long before it had been since there had been any liquor in them?

A. Not the jugs, but I think I could the bottles. I couldn't tell as to how long before they had been full.

The WITNESS.—(Continuing.) I could say that I could tell, by the jugs, as to what had been in them; some of them had had whiskey in them and some of them moonshine. I said I could not [29] tell by the jugs as to how long they had been in there, or how long before they had had whiskey in them.

Witness excused.

Testimony of Walter Holmes, for the Government.

WALTER HOLMES, produced as a witness on behalf of the Government in the foregoing entitled cause, having been first duly sworn, was examined in chief by Mr. Slattery, and testified as follows, to wit:

;(Testimony of Walter Holmes.)

Direct Examination.

(By Mr. SLATTERY.)

The WITNESS.—My name is Walter Holmes. I live at Miles City, and have lived there about two years. In the month of March of this year I was an officer of the city of Miles City, holding the office of traffic patrolman. I still hold the same official position in that city.

I know the defendant, J. W. Willis. I have known him personally since the raid; that is, the night of the nineteenth of March of this year. That occurred about eleven-thirty o'clock at night. That occurred at the place where he was living, at five hundred eleven Pacific Avenue, Miles City. I was with Mr. Procknow, Mr. Farr, Mr. Wilkinson and Mr. Estes to his house on that occasion. I went to the front door and entered the house. I saw the defendant in there, and there was a woman with him. I did not know the woman at that time. I had heard of her and knew of her by her reputation. I made a search of that house for the purpose of finding whiskey or liquor or bottles or jugs or containers for the same. I recall the occasion of Mr. Farr and Mr. Procknow leaving the house; they left before I did; I made the search after they left. Up until the time they left, I had observed empty bottles in those rooms; there must have been about forty or fifty bottles. [30]

Mr. SLATTERY.—Q. Did you notice any labels on them? A. Yes, sir.

Q. What were some of the labels on the bottles—

(Testimony of Walter Holmes.)

Mr. MURPHY.—We object to the question, if your Honor please, on the ground that the label would be the best evidence.

The COURT.—It is a sort of fugitive matter which may, however, be of some value, or perhaps it would not have been asked. Objection overruled; he may answer.

Mr. MURPHY.—Note an exception.

The WITNESS.—A. They were Green River bottles.

Mr. SLATTERY.—Q. Green River what?

A. Green River whiskey.

The WITNESS.—(Continuing.) In this search that I made, I found some bottles containing whiskey in that house; I found them in the bottom of the trunk; it was unlocked. I found a bottle of whiskey on a shelf in the front room; that bottle was nearly half full.

Mr. SLATTERY.—Q. I will hand you this bottle (handing bottle to the witness) and ask you to state if you can identify that? A. Yes, sir.

The WITNESS.—(Continuing.) I have seen it before; I first saw it at Willis', at the defendant Willis'. That is the bottle that I found on the little shelf in the front room (indicating).

Mr. SLATTERY.—We offer it in evidence. Do you want to see it?

Mr. MURPHY.—You offer the bottle and contents, both?

Mr. SLATTERY.—Both the bottle and contents.

(Testimony of Walter Holmes.)

Mr. MURPHY.—We object to it as not showing what the contents are.

The COURT.—You will show it, eventually, I assume.

Mr. SLATTERY.—Yes, your Honor; we will offer evidence to prove the contents, of course. [31]

The COURT.—Very well. Objection overruled, on the promise of counsel to make a sufficient showing.

The WITNESS.—(Continuing.) I picked that bottle up after I had found the other bottles. I found six other full quarts of Green River Whiskey; that was in the trunk.

Mr. SLATTERY.—I will now hand you two bottles (handing bottles to the witness), and I will ask you to state if you recognize those bottles?

A. I do; yes, sir.

The WITNESS.—(Continuing.) I first found those bottles in the trunk I have already described as being in Mr. Willis' front room. Those are absolutely two of the bottles which I took out of his trunk at that time. I have not tasted them or the contents of them myself.

Mr. SLATTERY.—I will offer them in evidence, on the promise to prove the contents of the same by another witness, if the Court please.

The COURT.—Were these sealed? Did they have the Government tax stamps on them?

Mr. SLATTERY.—Yes; they have the Government tax stamps on them.

The COURT.—It will be sufficient as it is to go to

(Testimony of Walter Holmes.)

the jury; but you have the privilege to prove the contents further, if you desire it.

Mr. MURPHY.—I'll take your word for it.

The COURT.—It will be for the jury to consider in the nature of any other evidence submitted in the case; I don't mean, of course, that the bottles are to go to the jury-room.

Mr. SLATTERY.—I beg the Court's pardon; I didn't quite understand?

The COURT.—I said they could go to the jury, they can consider it as evidence. I don't mean to send the bottles to the jury-room.

The WITNESS.—(Continuing.) There were some glasses there, but I couldn't exactly say there were whiskey glasses, because [32] I didn't pay any particular attention to them. I did not pick up any of the empty bottles or take them away. I did not search the kitchen; just the front room, where I found the six quart bottles of Green River whiskey. The other four bottles were like this (indicating).

Cross-examination.

(By Mr. MURPHY.)

The WITNESS.—My search was confined to the front room of that house. It was just a small room; I don't remember how many chairs there were in that room. I couldn't say whether there was a small table, with a telephone on it. I didn't pay much attention to the contents of the room. I did not say I found those two bottles, exhibits "B" and "C," in the bottom of the trunk and six others, I found them with four others. This one (indicated by counsel).

(Testimony of Walter Holmes.)

was on the shelf. Those are the only bottles I took any particular interest in. I just walked in the kitchen and picked up a few empty bottles and put them down again. I didn't notice whether this woman went out with Procknow.

Witness excused.

Testimony of George H. Estes, for the Government.

GEORGE H. ESTES, produced as a witness on behalf of the Government in the foregoing entitled cause, having been first duly sworn, was examined in chief by Mr. Slattery, and testified as follows, to wit:

Direct Examination.

(By Mr. SLATTERY.)

The WITNESS.—I live at Miles City; I have lived there a little better than three years, since June, 1910. I am an officer of the Industrial School. I teach the high grade there. [33] In the month of March, of this year, on the nineteenth of March, I went to the house at five hundred eleven Pacific Avenue, in the city of Miles City. I had one meeting with the defendant Willis prior to that night. I knew that night who he was. I couldn't say that that was his place that I went to on that night, for I don't know. He was in there when I got there, and there was a lady present; I had not known her before. I went to that house that night at eleven thirty or thereabouts. I saw Mr. Farr and Mr. Procknow in there. I was there when Mr. Holmes was searching the front room. I saw Mr. Holmes

(Testimony of George H. Estes.)

get something out of a trunk in that room. He took some bottles, labeled Green River whiskey out of it.

Mr. SLATTERY.—Q. I will show you exhibits “B” and “C,” and ask you to state if those are two of the bottles that he took out of there on that occasion?

A. Those are two bottles just like those that came out of that trunk.

The WITNESS.—(Continuing.) I noticed on that occasion that Mr. Holmes picked up another bottle, not full, on a little shelf in the front room.

Mr. SLATTERY.—Q. I will hand you Plaintiff’s Exhibit “A” (handing bottle to the witness) and ask you to state if you can identify that as the bottle which he picked up there at that time?

A. I didn’t put any label on the bottle, but this bottle (indicating) appears to be the same bottle.

The WITNESS.—(Continuing.) It had a Green River whiskey label on it. I am not sure whether I helped carry those bottles out or not; I couldn’t say. I noticed Mr. Procknow and Mr. Farr pick up quite a few empty bottles or jugs; there were quite a few; I couldn’t say just the names that were on them, except that I remember there were some of them with the Green River whiskey label on them. The label was similar to those on the exhibits before me. I didn’t smell of any of the empty bottles [34] in the room there, or of any of the jugs.

Cross-examination.

(By Mr. MURPHY.)

Q. Mr. Estes, these bottles merely look like some

(Testimony of George H. Estes.)

that you saw there at the house at that time?

A. Yes, sir; those bottles appear to be the same bottles that were there. I didn't put my label on them, as I say.

Q. There are no marks upon them by which you could identify them as the ones that were taken out of that house, are there?

A. As I stated a while ago, I did not put any label on them, but I saw Green River bottles taken out of the trunk.

Q. You don't know who took them away from the house, if they were taken away?

A. Well, either Mr. Holmes or myself took them over to the automobile in which they were carried to the police station—I disremember who did. Probably both of us carried some of them.

Witness excused.

Testimony of O. M. Wilkinson, for the Government.

O. M. WILKINSON, a witness produced on behalf of the Government in the foregoing entitled cause, having been first duly sworn, was examined in chief by Mr. Slattery, and testified as follows, to wit:

Direct Examination.

(By Mr. SLATTERY.)

The WITNESS.—My name is O. M. Wilkinson. I live at Miles City, Montana; I have lived there since 1914, in the spring. In the month of March of this year, my business, officially, was Mayor of the city; Mayor of Miles City.

(Testimony of O. M. Wilkinson.)

I know the defendant, Willis. I have known him since I moved to Miles City, about seven years. I have lived there a little over seven years. On the night of the nineteenth of March of this year, I was at a house or building known as number five hundred eleven Pacific Avenue, in the city of [35] Miles City. I went there about eleven-thirty, and I left there twice; I suppose it was about twelve o'clock, the first trip.

Mr. SLATTERY.—Q. And on either trip that you left, did you take away with you any bottles that had been turned over to you by anybody in that house?

A. Yes, sir.

Q. Who turned the bottles over to you?

A. Mr. Holmes was there at the time.

The WITNESS.—(Continuing.) That is the same Mr. Holmes who has testified here as a witness. He turned them over to me at the house. The bottles were in my care, and I drove to the City Hall and took them in there. I delivered them to the Chief of Police, Martin Golden. The bottles were marked in my presence.

Mr. SLATTERY.—Q. I will hand you Plaintiff's Exhibit "A" (handing bottle to the witness), and I will ask you to state if that is one of the bottles that you received from Mr. Holmes at that house on that occasion? A. I will say it was.

Q. Do you notice any marks on it?

A. There is two file marks that I put on the stamp.

Q. I will hand you Exhibits "B" and "C," and I will ask you to state if you received those two bot-

(Testimony of O. M. Wilkinson.)

ties (handing bottles to the witness) from Mr. Holmes on that occasion at the home of the defendant? A. Yes; I did.

The WITNESS.—(Continuing.) There is no question but what those are the two bottles that I received. I say I turned them over to Mr. Golden. In addition to those, I received other bottles from that house from Mr. Holmes on that occasion; I had quite a number of empty bottles; I wouldn't have any idea as to how many there were; two or three or four dozen. I don't know as I had that many; I didn't count them. Some jugs; one glass demijohn that might hold about five gallons, I guess, and [36] some jugs made of ordinary pottery. I received some other full bottles from Mr. Holmes there; there were four or five besides these indicating).

Cross-examination.

(By Mr. MURPHY.)

The WITNESS.—I witnessed a mark put on these bottles, Exhibits "A," "B" and "C"; I witnessed the marks that are on there. There are two file-marks on there on the neck of the bottle. Those are the only marks that I saw put on them. I got four or five other full bottles from there besides these. I was there when Mr. Farr and the others first went there.

Witness excused.

Testimony of Martin Golden, for the Government.

MARTIN GOLDEN, produced as a witness on behalf of the Government in the foregoing entitled cause, having been first duly sworn, was examined in chief by Mr. Slattery, and testified as follows, to wit:

Direct Examination.

(By Mr. SLATTERY.)

The WITNESS.—My full name is Martin Golden. I live at Miles City, Montana. I have lived there thirty-eight years, since 1883. I hold the position of Chief of Police in that city, and have held it since 1916. I know the defendant, Willis. I have known him about twenty-five or thirty years, ever since I came to the country. I know Mr. Wilkinson, the witness who has just testified. I recall the night of the nineteenth of March of this year, when he came to the police station. I was not there when he came in; I came in afterwards. I took or received from him some bottles with Green River whiskey labels on them. I marked those bottles at that time in his presence and in the presence of Mr. Holmes, who has already testified in this case. [37]

Mr. SLATTERY.—Q. I will hand you Plaintiff's Exhibit "A," and ask you to state if that is one of the bottles that you received from Mr. Wilkinson at that time (handing bottle to the witness).

A. Yes, sir.

Q. You placed that mark there yourself, did you?

A. Yes, sir; the letters "M" "G," and also the file-marks on the neck.

(Testimony of Martin Golden.)

Q. I will ask you to state whether or not Plaintiff's Exhibits "B" and "C" were also received by you on that occasion from Mr. Wilkinson, and marked by you in his presence and that of Mr. Holmes, who has identified them? A. Yes, sir.

Cross-examination.

(By Mr. MURPHY.)

The WITNESS.—Those are not the only three bottles that I received; I had six full bottles, besides the one partly full there. I marked the six bottles. I have the other four bottles.

Mr. MURPHY.—Q. And the only thing that you know about those bottles is that you put the initials "M" "G" and the file-marks on them?

A. After they were turned over to me.

Witness excused.

Testimony of H. M. Dengler, for the Government.

H. M. DENGLER, a witness produced on behalf of the Government in the foregoing entitled cause, having been first duly sworn, was examined in chief by Mr. Slattery, and testified as follows:

Direct Examination.

(By Mr. SLATTERY.)

The WITNESS.—My name is H. M. Dengler. I hold the official position of Internal Revenue and Federal Prohibition Agent; I was such during the month of March of this year, and ever since that time I have been such officer. I have had experience in [38] gaging whiskey to determine the alcoholic content, or proof of it, rather.

(Testimony of H. M. Dengler.)

Mr. SLATTERY.—Q. I will hand you Plaintiff's Exhibit "A," and I will ask you to state if you ever tested that, either physically or otherwise, for the purpose of determining whether or not it contained alcohol.

A. I examined this and found it to be whiskey. I didn't get the proof, because I wasn't—

Q. But you say it was whiskey?

A. That (indicating) is whiskey; it wasn't necessary to get the proof; the seal shows it.

Q. Plaintiff's Exhibit "A." Again handing you Plaintiff's Exhibit "A" (handing bottle to the witness), I will ask you to state whether or not you can tell, from anything appearing upon the bottle—

A. When I opened this bottle, I naturally had to break the Government stamp over the cork of the bottle here (indicating), which shows that it is one hundred proof, bottled in bond, whiskey.

Q. What does one hundred proof mean?

A. That is a designation to show that it is up to proof, that it is fifty per cent pure alcohol; one hundred proof is fifty per cent alcohol; the remaining ingredients are coloring matter, distilled water and whatever else they put into it.

Q. So that fifty per cent of the contents of that bottle is pure grain alcohol?

A. Fifty per cent by volume.

Q. I will ask you to state whether or not that bottle was received by you in the same condition—

A. This bottle—I received this bottle just as it is, except that the seal had not yet been broken, and

(Testimony of H. M. Dengler.)

there on the seal I would say that it was the same as the others (indicating) at the time I received it.

Q. Is that the United States Government seal on that bottle?

A. That is the Government stamp, bottled in bond.

Q. That implies that it is whiskey, does it not?

A. Yes, sir. [39]

Cross-examination.

(By Mr. MURPHY.)

Q. In arriving at your opinion of Exhibit "A," is it just from the smell or the taste of it?

A. I smelled it and I tasted it.

Q. Both? A. Both.

Witness excused.

Testimony of C. S. Hannah, for the Government.

C. S. HANNAH, a witness produced on behalf of the Government in the foregoing entitled cause, having been first duly sworn, was examined in chief by Mr. Slattery, and testified as follows, to wit:

Direct Examination.

(By Mr. SLATTERY.)

The WITNESS.—My name is C. S. Hannah. I live at Simms, Montana, in Cascade County. I am farming over there. In the month of March, of this year, I was in Miles City, Montana. I am acquainted with the defendant, J. W. Willis; that is the gentleman sitting down on the end of the table there (indicating). I first became acquainted with him on the sixteenth of March, of this year.

(Testimony of C. S. Hannah.)

I became acquainted with him at five hundred eleven Pacific Avenue; that is a small green building. Mr. Gordon was with me when I became acquainted with him. Mr. Gordon did not introduce me to him. Mr. Gordon walked into the house with me. After I got in there, Mr. Willis was there and Mr. Henderson was there. On that occasion and in that house, I drank some whiskey. The whiskey came from a bottle that Mr. Willis poured into a whiskey glass. The bottle was setting on a little stand in the corner of the room. Before Mr. Willis poured out this whiskey, Mr. Gordon ordered the drink; it was then that Mr. Willis poured it into a small whiskey glass.

Mr. SLATTERY.—Q. How many drinks did he pour out on that occasion.

A. There were three of us, and he bought drinks for [40] each of us. He poured them in succession out of one little whiskey glass. We drank out of the same glass. I drank mine and he poured the drinks around.

The WITNESS.—(Continuing.) He charged me fifty cents a drink. I bought the third round. The other persons who purchased rounds paid him; I don't know the exact change they got. He accepted the money from them. I should judge at the same rate of fifty cents a drink; that was the acknowledged price. I remained in the house on that occasion while I bought the drink; he poured the first drink, and there was an interval of fifteen or twenty minutes elapsed perhaps, and the same

(Testimony of C. S. Hannah.)

amount for the other drinks; perhaps a longer or shorter time. While I was drinking, I don't recall anybody that I know of coming to the house on that occasion. After the defendant furnished me with the drink, he set it back on the shelf; the bottle that he furnished this whiskey from was a—had a Green River whiskey label on it. The bottles were quite similar in appearance to Plaintiff's Exhibits "A" "B" and "C." I said it had a Green River whiskey label on it.

Mr. SLATTERY.—Q. Was there any question in your mind that what he furnished you at that time was whiskey?

Mr. MURPHY.—That is objected to, if the Court please, for the reason that it is irrelevant and immaterial as to whether he had any doubt in his mind.

Mr. SLATTERY.—I will withdraw the question.

The WITNESS.—(Continuing.) Prior to that occasion I had tasted whiskey quite often through about ten or fifteen years, I should say, so that on the sixteenth of March of this year I was familiar with the taste of whiskey. It was whiskey that the defendant sold me and the other gentlemen on that occasion. I was there again later on that same day, on the sixteenth of March. Mr. [41] Gordon and Mr. Henderson were with me. On the second occasion, I received some whiskey by purchase from Mr. Willis in that house. Mr. Henderson paid for it; I couldn't say at what rate per drink, but we always paid fifty cents a

(Testimony of C. S. Hannah.)

drink. He got the whiskey from the stand that he furnished us on the second occasion that we were there, from the same place that he got it on the other occasion. It was in a bottle. I don't think the bottle had a label on it; it was white liquor this time that he furnished us. I am quite sure the other bottle had no label on it. We had some conversation on that occasion about the difference in the whiskies between what he furnished us then and what he furnished us the first time. We said this was moonshine, and he said yes, and I remember Mr. Henderson said he liked moonshine, or something to that effect. I think Mr. Willis said that the moonshine was better than Green River. I don't remember exactly what the conversation was we had along the line of being able to drink moonshine and get up in the morning feeling fine and if we drank Green River we would get up with a headache; we were talking about the difference in whiskey.

Mr. SLATTERY.—Q. But there was a discussion as to the difference between the whiskey which he was selling you, was there, on that occasion? That was in the evening, as I understand you, of the sixteenth of March, and did you notice whether or not there was anybody else in the house besides yourself and Mr. Willis?

A. There were some other gentlemen there.

The WITNESS.—(Continuing.) They were in the same room that we were in. I was there again on the seventeenth of March of this year. On that

(Testimony of C. S. Hannah.)

occasion Mr. Gordon, Mr. Henderson, and a man by the name of—we called him Vic Smith—were with me. On the seventeenth of March I went there along later [42] in the evening, between nine and ten o'clock. On that occasion there was some whiskey sold to us by the defendant. I ordered the first round of drinks after we went in; he gave us whiskey. He served us in the kitchen this time. He had a bottle setting right by the stove. That bottle had no label on it. I should judge we were in the kitchen about fifteen or twenty minutes. The defendant told us to sit in the kitchen there a minute; he had something in the other room, and he opened the door and went in the other room while we were in the kitchen. At one time when he went in the other room from the kitchen, he took a receptacle in there with him. I heard a woman's voice in the other room, and I heard men's voices. I couldn't tell whether there was more than one woman in there.

Mr. SLATTERY.—Q. Well, from the sound of the voices in the front room, would you say they were the voices of boisterous people, or otherwise?

Mr. MURPHY.—To which we object as being leading, and asking for the conclusion of the witness. This witness is intelligent and I think he can state what he saw and heard without being asked in that manner.

The COURT.—I think the question is permissible in that form. Objection overruled.

Mr. MURPHY.—Note an exception.

(Testimony of C. S. Hannah.)

The WITNESS.—A. They were somewhat boisterous. (Continuing.) The defendant did not allow any of us who were in the kitchen to go into the other room that evening. The defendant made a statement to us about not going in there; he said he had a bunch in there, and he wouldn't let us go in there then; he told us to stay out. He served us two rounds of drinks in the kitchen on that occasion. It was of [43] the moonshine variety; it was whiskey. That is the last occasion I was there on the seventeenth.

Cross-examination.

(By Mr. MURPHY.)

The WITNESS.—I live at Simms, Montana. That is thirty-three miles from Great Falls. I was to this house on three occasions, two on one day and one on another day. It was shortly after noon when I went to the house first on the sixteenth. I stayed there then, I should judge, about an hour. Mr. Gordon and I went there that time. Besides Willis, Mr. Henderson was there. There was no one else came in at that time that I remember while I was there. I saw no other person in the house at that time. I came back later that day. That was early in the evening, but it was dark; I should judge it was about eight o'clock. Those are the only two times I was there on the sixteenth. On the sixteenth I came to the back door and went through the kitchen into the front room. That is just a small two room house. The second time that evening I came in the back door. I can't remember

(Testimony of C. S. Hannah.)

that we went into the front room. There were some other men in there at that time; I don't know their names; I recognized one of the men since I came here. He is in the courtroom. I don't know whether it was Richard Burnhart; they called him Bones; that's all I know. I couldn't say whether his name is Drinkert. The one they called Bones was there. There were two other men. I don't live in Miles City. When I came back the next day, the seventeenth, it was about ten o'clock in the evening, around that hour. The three of us were there then, Henderson, Hannah and Gordon, and another man by the name of Schaum, I think; he went with us. All four of us stayed in the kitchen at [44] that time. We had two rounds of drinks. I should judge we stayed there about half an hour at that time; maybe twenty minutes. That was about ten o'clock of the evening of the second night; I wouldn't be sure; between nine and ten; something like that.

Mr. MURPHY.—Q. Those are the only two occasions you ever went to this place?

A. On those two days.

Q. You don't know how many people were in the front room the night you were there the second time?

A. I went to the place another occasion, but there was no one at home.

Q. Do you know how many people were in that front room that you spoke of that night you were in the kitchen? A. Which night was it?

(Testimony of C. S. Hannah.)

Q. The second night.

A. No; I don't know who was in the front room.

The WITNESS.—(Continuing.) I heard some voices there. I should judge there was more than one person. It sounded like there was different men's voices, and there was just one woman's voice that I heard. I couldn't hear the conversation they were carrying on, but I am quite certain there was another man's voice besides Mr. Willis; that would make Willis and two others. I couldn't say whether that was all; I didn't see in the other room; I don't know. I was in the employ of the county attorney at that time, Mr. R. B. Hayes; the county attorney of Custer County. I couldn't say whether Henderson and Gordon were likewise in his pay; I don't know.

Mr. MURPHY.—Q. The three of you were making it a business, were you not, going around trying to find bootleggers?

A. We were getting evidence of bootlegging; yes, sir.

Q. And you spent several days doing that?

A. Yes, sir.

Q. And you were drinking freely at all different places, wherever you could get it? [45]

Mr. SLATTERY.—That is objected to, if your Honor please, as immaterial, whether they were drinking freely. The witness has testified that they paid for it.

The COURT.—He has shown the nature of his employment, and the incidents in connection with

(Testimony of C. S. Hannah.)

his drinking at this particular place. It is sufficient to show anything connected with this place; beyond that, I do not believe it is proper to go, and I do not believe the question is one that should be pressed. His occupation was an honorable one and entitled to as much respect as any other. The Court sustains the objection.

Mr. MURPHY.—Note an exception.

The COURT.—It may be noted.

Redirect Examination.

(By Mr. SLATTERY.)

The WITNESS.—(Continuing.) Defendant's counsel brought out that I saw there on the night of the sixteenth a man who is now in the courtroom. I said he was called Bones. He is the gentleman sitting in the front row (indicating), on the corner here(indicating). There were some other men there besides Mr. Willis and we three. They were talking about some cases that had been tried in the court at Miles City, some bootlegging cases.

Mr. SLATTERY.—Q. What did this man Bones say to Willis about those cases?

Mr. MURPHY.—If the Court please, we object to that as being immaterial, and having no possible bearing on the issues here presented.

The COURT.—Unless it would serve the purpose of showing a violation by this defendant or some phase of this case, it wouldn't be material at this time that I can see. There may, perhaps be a later time when it might be shown with more propriety. The objection will be sustained.

Witness excused. [46]

Testimony of T. R. Gordon, for the Government.

T. R. GORDON, a witness produced on behalf of the Government in the above-entitled cause, having been first duly sworn, was examined in chief by Mr. Slattery, and testified as follows, to wit:

Direct Examination.

(By Mr. SLATTERY.)

The WITNESS.—My name is T. R. Gordon. I live in Rosebud County, Montana. I have lived in Montana since 1916. My general occupation has been homesteading and contracting, road work. In the month of March of this year I was employed by the county attorney of Custer County for the purpose of seeking out violators of the prohibition law. In the month of March of this year, I became acquainted with the defendant, Willis. I became acquainted with him first on the tenth day of March of this year. That was at five hundred eleven Pacific Avenue, in the city of Miles City. Mr. Henderson introduced me to him. On that occasion I went to the house, to the back door. On that occasion I remained in there something like thirty minutes. I had something to drink in there; it was bought. Henderson bought one and I bought one round of drinks. I bought whiskey from Willis, the defendant. I paid fifty cents a drink for what I bought. He gave us the whiskey out of a quart bottle. It had a label on it. The bottle was on a little shelf in the front room. When he delivered it to us, he poured the whiskey into a small whiskey

(Testimony of T. R. Gordon.)

glass. He displayed one whiskey glass at that time. He did not entrust either of us with the bottle. I purchased whiskey again from the defendant in that building on the eleventh; that was the following day. There was no more than one round purchased on the eleventh of March; Mr. Henderson paid for that. It was whiskey that was purchased. [47] It was gotten from the same place. The bottle was labeled Green River whiskey. After the eleventh of March, I was there again on the twelfth. On the twelfth of March, I bought whiskey from the defendant in that house and drank it there. I paid him for it. He got it out of the same bottle, apparently. He got it from the same place in the same room. I was not there more than once on the twelfth of March. I bought some more whiskey from him after the twelfth of March in the same room, on the fourteenth. Mr. Henderson was with me. I paid him for the whiskey. He charged me fifty cents a drink for this whiskey. After the fourteenth of March, I purchased some on the sixteenth; on the sixteenth and seventeenth also. With respect to the fourteenth, sixteenth and seventeenth of March that I bought whiskey there in that house, we were served with whiskey out of a bottle with a Green River label on it, a Green River label, and also with white whiskey. It was called moonshine. Mr. Willis called it moonshine. I remember when he first served me with moonshine whiskey; it was the afternoon of the sixteenth. Mr. Hannah was present on that occasion. Mr. Willis said he would

(Testimony of T. R. Gordon.)

much rather drink moonshine whiskey than Green River whiskey. There was no difference in the price that he charged me for moonshine as against the other; the same price. I recall the occasion of drinking whiskey in the kitchen. That was on the seventeenth. I recall on that occasion hearing someone in the front room of the house. I did not dare to go in the front room on that occasion. Mr. Willis just came up and closed the door and said he had company in the front room. I heard a lady's voice and a man's voice in the front room, but I couldn't quite understand the conversation. The defendant did not allow me to go into the front room on that [48] occasion. He took the slop jar into the front room. What whiskey I got from him on that occasion, I got from him in the kitchen, and paid the same price for it. I saw in that house on the night of the sixteenth of March a man called Bones. He is in the courtroom now.

Mr. SLATTERY.—Q. You overheard a conversation, did you, between him and Mr. Willis—a conversation between Mr. Willis and Mr. Bones?

A. Yes; they were talking about a case—

Q. I am not asking you what it was, Mr. Gordon, now—

The COURT.—If it is anything incriminating, you have a right to bring it forward at this time. It may properly be part of your case in chief, and the Court previously denied it for the reason that you were going into it on redirect. The ruling at that time was that it was improper redirect examination.

(Testimony of T. R. Gordon.)

Mr. SLATTERY.—I can just as well save it for impeachment, if your Honor please.

The COURT.—Very well; proceed.

The WITNESS.—(Continuing.) On one of those days that I was in there buying whiskey from the defendant, I saw a colored woman in there by the name of Lizzie Drake; that was on the fourteenth, just a little before noon. She came into the house after I was in there. She came in the back door. We were sitting in the front room. She came into the front room. She sat down in Mr. Willis' home there. She was served with whiskey on that day in Mr. Willis' home. Mr. Henderson bought a round of drinks and Mr. Willis served her with it; that is the defendant in this case.

Mr. SLATTERY.—Q. Was that out of the same bottle that you drank from?

A. Before that; yes, sir.

The WITNESS.—(Continuing.) Miss or Mrs. Drake, whatever her [49] name is, remained in there on that occasion, I would say about thirty minutes. There was not more than one drink furnished to her by Mr. Willis on that occasion that I remember. On the night that this man known as Bones and other people were there, drinks were served to Bones and the other people. There were three other people in the Bones party, if I remember right. There were two rounds of drinks served at that particular time to Bones and his party. I saw someone pay Mr. Willis money for the drinks that

(Testimony of T. R. Gordon.)

were served to Bones and his party. Mr. Henderson paid for one round of drinks and the other party paid for one. I couldn't say what Mr. Willis charged them for drinks, but he always charged me fifty cents a drink. I saw the money change hands.

Cross-examination.

(By Mr. MURPHY.)

The WITNESS.—When this colored lady came in there, I don't remember whether she had a bucket of eggs with her or not.

Mr. MURPHY.—Q. Didn't she come in there and want to borrow some money from Mr. Willis to buy horses with?

Mr. SLATTERY.—That is objected to, if your Honor please, as immaterial and not proper cross-examination.

The COURT.—Under the circumstances of what happened there, it might be material on cross-examination; this is cross-examination. You may answer. Objection overruled.

The WITNESS.—A. No, sir; there wasn't anything said that I heard. (Continuing.) I don't remember a word of her wanting to know something about money for horses that she was going to buy at Fort Keogh. She didn't have any eggs she wanted to sell. I don't remember seeing any eggs.

Mr. MURPHY.—Q. Didn't you and Henderson go out of the Willis house and go down an alley to the house that she was [50] living in, and didn't she cross the street and go around by the street to

(Testimony of T. R. Gordon.)

her house and she let you come up and cook some eggs there, and give you a meal there?

Mr. SLATTERY.—That is objected to as improper cross-examination and immaterial for any purpose in this case.

The COURT.—This is cross-examination. I think it is proper. He may answer. Objection overruled.

The WITNESS.—A. Yes, sir.

Mr. MURPHY.—Q. And later, on other occasions you went back and got eggs there and ate at her house, didn't you?

A. Yes, sir; I had two meals at her house.

The WITNESS.—(Continuing.) I paid her for them.

Mr. MURPHY.—Q. She only said that she had a bucket of eggs she just brought from the house and wanted to sell them to him and Willis said that he had bought eggs, or got eggs from the ranch and didn't need them?

Mr. SLATTERY.—Objected to as immaterial. I can't see the purpose, if your Honor please, of this conversation about eggs.

The COURT.—Oh, perhaps it isn't very material, but he may answer; overruled.

The WITNESS.—A. No, sir; I didn't hear any conversation between her and Mr. Willis in regard to eggs.

The WITNESS.—(Continuing.) That was only a small house. I was in the front room when she came

(Testimony of T. R. Gordon.)

in. She came in the back room. She came right on into the front room. She was alone. Henderson and Willis and I were alone. I first went on the tenth to Willis' house, and the next was the eleventh, twelfth, fourteenth, sixteenth and seventeenth. The seventeenth was the last time I was there. I wasn't there during the raid. These times I went down there I went as an employee of the [51] county attorney to secure evidence against Willis.

Mr. MURPHY.—Q. Handing you paper marked Defendant's Exhibit One, I will ask you if that is your signature (handing paper to witness.)

A. Yes, sir.

Q. Just take a look at it so as to be sure?

A. I think that is my signature; yes sir.

Q. That was signed by you before a person who signs his name as James W. Austin, Deputy Collector, was it not?

A. Yes, sir.

Q. Mr. Austin is a Deputy Collector of Internal Revenue for the District of Montana, is he not?

A. Yes, sir.

Mr. MURPHY.—We offer, as part of the cross-examination of this witness, defendant's proposed Exhibit One.

Whereupon a recess was had in the trial of said cause for the period of five minutes.

Court convened pursuant to recess.

Present.—Same as before.

The COURT.—Proceed.

(Testimony of T. R. Gordon.)

Mr. SLATTERY.—We object, if the Court please, to the introduction of the proposed Exhibit on the ground that it is immaterial and no foundation has been laid, and that it has no probative value.

The COURT.—Objection sustained.

Mr. MURPHY.—Note our exception.

The WITNESS.—(Continuing.) I saw this man I called Bones there in the house on the evening of the sixteenth; it was along, I should judge, about nine o'clock, at night.

Mr. MURPHY.—There was a prosecution of this defendant on this charge in the State Court in the month of April, 1921, in Custer County, was there not?

Mr. SLATTERY.—If your Honor please, that is objected to as [52] incompetent, irrelevant and immaterial and improper cross-examination.

The COURT.—Well, I must assume, under the circumstances, that this is cross-examination. Of course, counsel is not obliged to disclose his purpose. Objection overruled; you may answer.

The WITNESS.—A. It was something about that time, I think; yes, sir.

Mr. MURPHY.—Q. In the month of April?

A. Yes, sir.

Q. Was the prosecution of this defendant, Willis, for this same charge on which he is being tried here?

The COURT.—No, no; that is impossible.

Mr. MURPHY.—May I have leave to finish the question, your honor?

The COURT.—Pardon me; I thought you had

(Testimony of T. R. Gordon.)

finished. Go ahead with your question.

Mr. MURPHY.—Q. On a charge in the state court for the same offense for which he is being tried here?

A. Yes.

Mr. SLATTERY.—I object to that on the ground that it is improper cross-examination—

The COURT.—I had assumed that you were pursuing a legitimate course, Mr. Murphy. Of course, the defendant could not be tried upon the same charge. The witness has already answered, however. Proceed.

Mr. MURPHY.—Q. Did you testify in that proceeding as a witness? A. Yes, sir.

Q. Didn't you testify in that proceeding in the month of April, in Custer County—1921, that you did not know that it was moonshine or whiskey that you got? A. Not that I remember of.

Redirect Examination.

(By Mr. SLATTERY.)

The WITNESS.—As a matter of fact, I got both kinds of [53] whiskey at his place, during the times that I have testified to.

Mr. SLATTERY.—The Government rests.

The COURT.—Proceed with the defense.

Whereupon counsel for the defendant stated the evidence which the defendant intended to adduce upon the trial of this cause.

Testimony of J. W. Willis, in His Own Behalf.

J. W. WILLIS, the defendant herein, produced as a witness in his own behalf, having been first duly sworn, was examined in chief by Mr. Murphy, and testified as follows, to wit:

Direct Examination.

(By Mr. MURPHY.)

The WITNESS.—My name is J. W. Willis. I live in Miles City. The thirtieth of this month, it will be thirty-one years I have lived in Miles City. I came up from Texas with a bunch of trailers and I worked on the range all the time and on the ranch until fourteen years ago. Fourteen years ago I went into the hotel and saloon business. The name of my hotel in Miles City was the Miles City Hotel. It was located right across from the N. P. depot, on Pacific Avenue and Sixth street. On the plot of ground that the hotel was on, I had a barn and two or three coalsheds, and a little cottage that I lived in. That was just one small cottage with two rooms in it. The front room was twelve by sixteen, and the back room was about just the same width but it wasn't quite as wide. During the fall of 1920 I went to California; I left there the sixteenth day of November. When I went away I rented the hotel and cottage out to a man by the name of Kimball, Frank Kimball, the cottage and the hotel. I came back from California the [54] sixteenth day of February, 1921. Kimball was living in the cottage at that time. The hotel was burned down while I was in California.

(Testimony of J. W. Willis.)

Mr. MURPHY.—Q. You returned for what purpose?

A. Well, to collect the insurance and to clean up what I had there.

Mr. SLATTERY.—I object to all of this as immaterial, if the Court please.

The COURT.—It seems to me it is clearly immaterial, but I don't see that it matters. Shorten it as much as possible.

Mr. MURPHY.—I just want to show the purpose of his return.

The WITNESS.—(Continuing.) When I came back, Frank Kimball moved out and I lived in the cottage. My furniture was in that cottage. During the month of March, from the time I came back, I was busy taking down the house; I had contractors and builders take the house down, and I was busy with them—seeing that they took it down and moving out the stuff that wasn't burned. I had three or four in my employ there, I reckon; Dick Burnhart was one, and James is one and Bones is the other. I don't know his other name; I worked with him on the range so long, and we always knew him by Bones. His real name is Drinkert. There was another one there, but he left the country; I don't recall his name. On the 10th of March, 1921, I was engaged in the work of wrecking that hotel building. I had to wait until they got a lot of the litter off, so I could get the bar and stuff out, but the tenth of March, I got these men to remove the bar fixtures and stuff out. I just barely know the witnesses

(Testimony of J. W. Willis.)

Gordon and Hannah, who testified here in this case, if I see them is all. I recognized them after they come here, but I wouldn't know them now by name. I remember Gordon coming to my house about the tenth of March, 1921. There was Gordon and Bert [55] Henderson were the first two that came in. When the first came to my house on the tenth of March, they was all around there working; I don't know just whether there was right at that time or not. I think they come in the morning about ten o'clock the first time; they didn't stay over ten minutes. They came in and wanted a drink, and I told them I didn't have any. They said, "Well, we've got some to sell," and they pulled a bottle out of their pocket and passed it around. I took a drink out of it myself. It was what I call moonshine. I told them it was pretty good. I had to brag on it, because they gave it to me. They wanted to sell me some. Bert said he made as much as fifty gallons in a day; said he had a still out in the country some place. They came back, I believe, that evening; I don't remember, but when they came back, I was busy and I didn't pay much attention to them. It was along two or three o'clock, I guess, some time; I don't remember, in the afternoon. There were some boys there that were working for me. They were in the house. They brought back the same bottle or another one, and we had another drink around, and one of them was telling where there was some women that they could fool around with, and they asked me if I knew, and I says,

(Testimony of J. W. Willis.)

“Well, I don’t know, boys,” I says, “but I am going over to the depot, and you can come and go over there with me, if you want to, and I’ll show you,” I says, “where there ought to be something.” I says, “Just scatter around over here”—they went over with me—and I says, “You may get a high-ball most any time; there’s most always plenty of them around here.” I went home and they came back in about half an hour. I guess they didn’t have much luck. To tell the truth, I don’t remember what time that was, but it was along about eleven or [56] twelve; somewhere along there. So they came back, and they says, “There’s nothing over there”; they didn’t find anything, and then Hannah picks a quarrel, it seems to me like, with these two other fellows, and they was all standing there talking pretty loud, and I says, “Boys, this is no place for trouble, or anything,” I says, “I’m busy; better take a walk,” and they walked out and went away. These boys, Hannah, Henderson, Gordon, Dick Burnhart, and James and Bones, they was all that was there. There were some drinks taken there that time; they had their bottle. Henderson always carried the bottle. The times they came to my place Gordon there wasn’t so awful drunk, but Henderson was always stewed when I would see him any place. Any time he came to my place he was stewed to the gills; he was drunk. They never stayed in my place any length of time; they wouldn’t be there over fifteen or twenty minutes at the outside. It was a quart bottle they had the moonshine in. They

(Testimony of J. W. Willis.)

asked me several times to buy, but I told them I was trying to sell my property and get out of there. I had an option on property in California, and I wanted to get out of there by the Fourth of July, and I wouldn't take chances on getting in trouble, for I expected to leave here. They came back after that; there was three of them came back, the same three. I don't remember, but I think it was the evening of the seventeenth, but it was about four o'clock in the evening when they came back that time. They came in with a bottle, but they didn't ask me to drink that time; they didn't say a thing about it. I don't now much about what occurred there at my house that day. I was sick, and I got out of bed that day, and I was up to Mr. Hayes' office, but I wasn't gone more than about twenty minutes. I was in bed all day long. I was in bed [57] the night of the seventeenth also; I didn't get up all day. I was sick in bed. Vic Smith was with them; he was there all right, and I asked him for a witness to come up here, and he said—

Mr. SLATTERY.—Move to strike out that answer of the witness as not responsive and—

The COURT.—Motion granted.

The WITNESS.—Vic Smith was with them on one of their visits to my house. The three men I testified about came with Vic Smith; that was about four o'clock in the evening. They came in and sat down, and wanted me to take a drink at that time. I says, "No, boys; I can't; I'm sick; I can't drink at all." That was the time I was in bed, on the

(Testimony of J. W. Willis.)

seventeenth. Vic Smith was sitting there drinking *out their* bottle all the time. They didn't stay but a few minutes, anyway. They didn't mention buying any moonshine then. The seventeenth I promised them a dinner the next day, and there was a couple of women came in and cooked this dinner, and I guess there was half a dozen or more for this dinner. I was sick and never got out of bed to eat myself. When Vic Smith came there with these three men, Bones and Burnhart were there. I don't know whether there were any drinks passed to them in my presence I didn't look. I rolled over in bed and I didn't turn over to see what there was. I did not at any time in the month of March ever give or sell any moonshine whiskey or Green River whiskey, or any kind of whiskey, to Gordon, Henderson or Hannah or anyone else, but I had it; I had Green River. I had that in my trunk. I thought there were twelve bottles, but they claim there was only six. I know of a cupboard out there in the kitchen. Frank Kimball built that cupboard there. I don't know when that was built; [58] he built it while I was gone; while I was in California. I never had a key for that cupboard. Kimball had some stuff in there, and he even had the key to my cottage, and after that raid was made, he came in and carried out some stuff that he had there, and I never knew what was in this cupboard; it was locked. The night that Mr. Farr came down there, I told him—he asked me to open this locker, and I says, “I haven't got the key; Frank Kimball's got the key

(Testimony of J. W. Willis.)

to that." He took a bar or a poker and pried the lock off. I didn't know of any moonshine whiskey or anything being in the cupboard until after they had taken it out. This Green River whiskey that I had was a little stock I had when the saloons closed, and I kept it for myself, and when I went to California, I had it in my trunk, and I buried it out in the barn when I went to California, and when I came back, I went and got it and put it back in my trunk. The house was pretty well furnished. There were three rockers and leather chairs and a bed and a washstand and a bureau, and a stand table. In the kitchen, I've got a good cooking outfit, a range and table and dishes to cook with. I did not have any whiskey or beer glasses around the house. I don't know whose jugs those empty jugs were that were found there; they got them, I guess, out of the locker. The bottles that were there were thrown out in the back yard from the old building around there. There was lots of bottles around there; around the barn now there is a carload, nearly. I don't know whether there were any bottles in the house at the time of this raid; there might have been at that. I hadn't been there for so long I didn't pay much attention to what there was, but this liquor, I never had anything to do with that; never had a key for it at all. I guess the stuff they found was in that. I came back [59] the sixteenth of February. Dick Burnhart came over every morning and started the fire and cooked there; he stayed there with me all the time.

;(Testimony of J. W. Willis.)

I remember one occasion when Gordon and Henderson were at the house that Lizzie Drake came to my house. I don't remember exactly what day that was; it was along about the fourteenth, I think, about as well as I remember. I couldn't recall the dates. They just came in the house when Lizzie came in there. She came in with a little basket of eggs, and wanted to know if I wanted to buy some eggs, and I told her no, I had some. Then she wanted to know if I would lend her twenty-five dollars to buy a horse at the Fort Keogh sale; they was having a sale on over there—I loaned her the twenty-five dollars.

Mr. MURPHY.—Q. At that time did you serve or give any intoxicating liquor of any kind to Lizzie Drake or those two men?

A. They wasn't in there ten minutes—

Mr. SLATTERY.—That isn't responsive to the question, and I object to it on that ground.

The COURT.—No; that isn't responsive. Read the question.

Last question read by the stenographer.

The WITNESS.—No, sir; I did not. (Continuing.) She said these were fresh eggs, and one of them spoke up and says, “I could eat some of them; we ain't had any fresh eggs for a long time.” She says, “If you're hungry,” she says, “come down to the house, and I'll cook you men the eggs.” She says, “I'll go down the alley and you can go down the street, and I'll cook you a meal.” They said they didn't know where she lived, and I says, “Boys,

(Testimony of J. W. Willis.)

I'll tell you where she lives." That was only a block from my place, and I showed them where she lived, and they went on down there. I never seen Hannah in the house but twice. I couldn't say how many times Gordon came to the house; I couldn't say how many times; I [60] think it was three days that he come; I don't know whether that's right or not. I tried to get this Victor Smith here as a witness, but I wasn't able to. He is in Colorado.

Cross-examination.

(By Mr. SLATTERY.)

Q. This Frank Kimball that you mentioned is the same Frank Kimball who has a case set for trial here in a few days from now, isn't he?

Mr. MURPHY.—We object to that as being immaterial and not cross-examination.

The COURT.—Objection sustained.

The WITNESS.—(Continuing.) I don't know where Kimball is. I saw him last Friday. The moonshine and whiskey in the cupboard belonged to him. I don't know when it was put in there. I had a contract in writing for the wreckage of that old building. I had that contract with Hunter. The party with whom I was contracting to remove it is a stranger to me. I know him after having made the contract with him, if I can think of his name. I didn't have anything to do with the wrecking of the building, only to take out my furniture that hadn't been burned. I say this whiskey that I had in my house was whiskey that I had left over

(Testimony of J. W. Willis.)

from the saloon. I'll be darned if I know when I did get that Green River whiskey in. I couldn't tell you when I went out of the saloon business even; I never kept any track of it. I don't know when I did get it. My saloon closed on the thirtieth of December, 1918. That's the day prohibition went into effect in Montana. I don't know whether this whiskey was whiskey I had on hand at that time or not. I didn't exactly testify to that in my direct examination. I said that this was whiskey that I had left over from the [61] stock that I had in my saloon. I don't know whether I did have this whiskey in my saloon in 1918 or not. I thought I did. I said so. I don't think I swore to that a while ago.

Mr. SLATTERY.—Now, I will ask you to state whether or not you did have it in your possession in that year, 1918, at that time that the saloons were running in Montana?

A. I know I packed away a lot of it.

Q. Answer my question, please.

A. I don't think I did have it then.

Q. If you so testified in your direct examination, you wish now to change your testimony, do you not?

A. I had a bunch—

Q. Answer my question: Do you wish to change your testimony I asked you?

A. I had quite a few bottles left over; I don't know; I can't say whether—

Q. I am not asking you that. I didn't ask that. I say do you wish to change your testimony?

(Testimony of J. W. Willis.)

A. No, I don't think—I don't know whether I had that or not.

Mr. SLATTERY.—May I have an answer to that question, your Honor?

The COURT.—Counsel advises you that you stated on direct examination that you had this whiskey from your old saloon. Now, he asks you if you want to change that. Was that right?

A. I think I had better change it, because I can't tell. I had whiskey left over and I got whiskey since, to tell the truth about it. I don't know whether this was old stock or some of it that I got since then.

The WITNESS.—(Continuing.) I do not know where the whiskey came from that Holmes was testifying about having taken out of my trunk on the night of the nineteenth of March. I know it was Green River whiskey. This looks like a bottle of it (indicating); it looks just like it. I couldn't say. [62] I put it in the trunk about the twentieth of March, I guess; I meant in February; I'll take that back; I meant in February, 1921. I took it out of the barn to put it in the trunk I had it buried in the barn. I buried it in the barn when I left to go to California. I left there the sixteenth of November, 1920. I got it in the cottage to put it under the barn; it had been in the cottage for a year and a half or two years, I don't remember.

Mr. SLATTERY.—Q. Then you did have it in the old saloon stock?

A. Yes. Oh, I had had that, I don't know how

(Testimony of J. W. Willis.)

long, when I left to go to California.

Q. You have answered that you did have it in the old saloon stock, haven't you?

A. There was some bottles I had of the old left over, and some I have got since.

The WITNESS.—(Continuing.) About the tenth of March some men came to my house and wanted to know if they could buy whiskey from me. Those men were Gordon, Hannah and Henderson. There weren't three of them; two came there first. The two were Gordon and Henderson. I don't know whether it was the tenth of March they came to my place and asked me to sell them whiskey; I couldn't say. It was along about that time. I said I can't remember the date. I don't think—I think it was about the eleventh or twelfth, as near as I can remember. The first time they came to my house, they asked me to have a drink, and wanted to sell me some whiskey. They came to me and asked me for whiskey. That wasn't the first thing they asked me for; they asked me to sell *me* some. They asked me to sell *me* some, after we had a drink of theirs. They offered to sell first and wanted me to sample it. I sampled it. Gordon had the whiskey—no, not Gordon, excuse me; Henderson had the whiskey. It [63] was a quart bottle.

Mr. SLATTERY.—Q. Now, do I understand you to tell the jury that they came over to your house day after day until the nineteenth, practically, and each time gave you a drink of whiskey out of their bottle? A. Why, they had a bottle.

(Testimony of J. W. Willis.)

Q. I didn't ask you that; answer the question.

Mr. MURPHY.—We object to that as being unfair to the witness; the witness hasn't testified that they came there day after day.

The COURT.—I think he said that Hannah came twice and Gordon three times.

Mr. MURPHY.—Yes.

The COURT.—Make your question correspond to the facts.

The WITNESS.—(Continuing.) I don't remember how many times between the fourteenth of March or the twelfth of March and the nineteenth of March any two of these men came there together. They were there three or four times; I don't remember; I didn't pay any attention. They weren't there each day, those two; they were there several times.

Mr. SLATTERY.—Q. Did you tell the jury that on each occasion that they came there between those days, they furnished you whiskey in your own home?

A. They had whiskey. Well, no; I don't think every time they didn't have whiskey; there was two or three times that they didn't have any.

The WITNESS.—(Continuing.) I deny now the testimony of these witnesses who said that I sold them whiskey on those occasions; I say that I never sold them any. I didn't give them any. I took a number of drinks from them. Yet, having it in my trunk, I offered them none in return. There might have been a bottle with a Green River label on it on

(Testimony of J. W. Willis.)

[64] the little shelf in the front room. There was whiskey in that. There was no whiskey glass there; I never had any glass there. That bottle with the whiskey in there was there the night that Mr. Farr and these other gentlemen came to my house. It might have been there also when Mr. Gordon and Mr. Hunter were there. I never kept a bottle of this Green River whiskey on the shelf in the front room all the time. I took it out every night. In the evening I took out the bottle and took a drink or two before I go to bed, and left it set there and in the morning I took another drink or two. I hadn't gone to bed that night. I couldn't tell the name of the woman I had in the house that night; they called her Hope was all I know.

Mr. SLATTERY.—Q. They called her Hope. What was she doing in your house at half-past eleven that night? A. No; there was a mistake in that.

Q. Do you deny the testimony of all these gentlemen as to their having been at your house at half-past eleven that night?

A. I'll tell you how it was—

Q. Answer the question. You'll have an opportunity to explain later. A. Why—

Mr. MURPHY.—Just a moment; let him have an opportunity to explain.

The COURT.—You will answer the questions as counsel puts them to you as long as they are permissible questions, which the Court, on the objection of your counsel, will determine. If there is any explanation due, it will come later, if it appears to

(Testimony of J. W. Willis.)

be proper. Read the question.

Last question read by the stenographer.

Mr. SLATTERY.—Q. You may answer that yes or no. A. Why, no; they weren't there.

Q. How long— [65]

Mr. MURPHY.—I submit the witness didn't understand that question. It is a negative question, and I ask that the question be read to him again, so that he may understand it.

The COURT.—Read the question.

Last question read by the stenographer.

The WITNESS.—A. They was there about half-past eleven, yes, at the time they got through.

The WITNESS.—(Continuing.) They got there about half-past ten. She had been in there not over twenty minutes before they came. With respect to the time that Mrs. Drake came there, I deny furnishing her a drink of whiskey.

Mr. SLATTERY.—Q. Do you recall being arrested about two weeks after the nineteenth of March in your own home, when you were intoxicated—

Mr. MURPHY.—To which we object as being immaterial and not cross-examination.

The COURT.—I think so; sustained.

The WITNESS.—(Continuing.) On the night of the sixteenth or seventeenth of March, when Mr. Gordon and Mr. Hannah were in the house, I do not recall carrying a vessel or chamber from the kitchen in the front room. On the seventeenth there was a woman in the front room. On the seventeenth

(Testimony of J. W. Willis.)

there was a woman or women in the front room.

Mr. SLATTERY.—Q. You remember you didn't allow these men Hannah and Gordon in the front room, did you? Your moonshine that you served them was in the kitchen, was it not?

A. Moonshine was served in the front room and kitchen, too. There was nobody in the front room, but they might come in the front room and pass the bottle around.

Q. Who passed the bottle around?

A. Gordon; not Gordon, but Henderson.

Q. What women were in the front room on that occasion?

A. Well, there was Alice Brown was one of them.
[66]

Q. Who?

A. Alice Brown, a girl, and a married woman by the name of Gunderson; they was there on the seventeenth, and Mrs. Countryman.

Q. What is the occupation of Alice Brown?

Mr. MURPHY.—That is objected to as being immaterial.

The COURT.—It might be material; overruled.

Mr. MURPHY.—Note an exception.

The WITNESS.—(Continuing.) Alice Brown didn't have any occupation at all then. The occupation of the lady that I called Gunderson was a married woman. She was a housewife. Mrs. Countryman owned property; I don't know what her occupation was. She was just a property owner. Miss or Mrs. Drake is a rancher. She lives in Miles City

(Testimony of J. W. Willis.)

near me; she don't live over a block away. I don't know how long she has been there.

Redirect Examination.

(By Mr. MURPHY.)

The WITNESS.—Alice Brown had rooms rented in the hotel when I ran the hotel. This woman called Hope came there to buy the furniture. I was talking about leaving for California and she wanted to buy the furniture. She was living with her husband in Miles City. Mrs. Drake's ranch is, I would say, around a mile and a half from town, up the river in the country.

Witness excused.

Testimony of Richard Burnhart, for Defendant.

RICHARD BURNHART, a witness produced on behalf of the defendant in the foregoing entitled cause, having been first duly sworn, was examined in chief by Mr. Murphy, and testified as follows:

Direct Examination.

(By Mr. MURPHY.)

The WITNESS.—My name is Richard Burnhart; I live at [67] Miles City.

Mr. MURPHY.—Q. How long have you lived at Miles? A. J. H. Burnhart.

Q. How long have you lived at Miles City?

A. About twenty-three years.

The WITNESS.—(Continuing.) My business is harness and saddlemaker. I know the defendant, Mr. Willis. I have known him possibly twenty years;

(Testimony of Richard Burnhart.)

something like that. I live at three hundred Washington, Miles City. I know where Mr. Willis' cottage was that he was living in in March. I lived with him at that cottage. I came down there in the morning and started the fire and got breakfast, and was trying to watch the fellows that was wrecking that house there; there was two of them; sometimes more. I helped cook breakfast and wash the dishes when I got there in the morning, and looked around there while they were wrecking that building. They had tools in there that they were carrying back and forth, and I stayed in the house in the daytime. I would be there possibly early in the morning, and then along about nine or ten o'clock I would go in town and come back about three or four in the afternoon. Sometimes I stayed longer than that, according to how things were going. I know the witness Gordon and the witness Hannah who have testified here. I saw them down there, but I am not personally acquainted with them. I saw them down at Mr. Willis' cottage. I saw them down there, I think, along about the sixteenth or seventeenth of March, something like that; I don't remember exactly. I saw them there twice. Besides Gordon, Hannah, Mr. Willis and myself, there was a man there by the name of Vic Smith. Vic Smith was in there at one time. There was a fellow in there I think they called Pearl Anderson—Henderson. There was a fellow they called [68] Bones there, and a fellow they called Jay English, and another one, I don't know what his name is.

(Testimony of Richard Burnhart.)

It was about evening time, getting dark at the time I first saw these three men—Henderson, Hannah and Gordon; I was in Willis' house. English and Bones were in the house, too.

Mr. MURPHY.—Q. And yourself. And who came to the house first; Henderson and his two friends, or the others?

A. I believe the other party was there first.

The WITNESS.—(Continuing.) They were sitting there talking at the time when we came in; they were sitting there arguing and talking when I came in there. When Vic Smith and Henderson and Hannah and Gordon came in there, they were talking about a still they had somewhere on an island in the Yellowstone River. Pearl Henderson was talking about the still. He said he had one over there and he had lost it, and he had some stuff hid in the hills. He had some whiskey hid in the hills. There were some drinks had around there at that time. I went around the circle where they were sitting and picked up the bottle and took a drink out of it. I didn't see them bring the bottle there. I first saw the bottle going around the circle when I came in, and I went around and took a drink out of it. Those men came in through the kitchen door at that time; that would be the back door. They didn't stay there very long. I don't remember just the date that Hannah, Henderson and Gordon came there, but there was two times I saw them down there. I think it was after this time I have told about. At the time that I saw them there, I did

(Testimony of Richard Burnhart.)

not at any time see Mr. Willis produce any kind of whiskey or moonshine whiskey, and give or sell any of it to Gordon or Henderson or Hannah or anybody else. [69]

Cross-examination.

(By Mr. SLATTERY.)

The WITNESS.—I have lived in Miles City about twenty-three years. I am fifty-two years old. I am not a married man. I live some distance from this five hundred eleven Pacific Avenue; about eight blocks from it.

Mr. SLATTERY.—Q. When did you commence the habit of eating down there mornings and cooking your breakfast down there?

A. After I would get through with my chores in the shop, and when there wasn't much doing, I used to go down there.

Q. What shop?

A. In the shop I was working at, the saddle shop. We were practically laid off and there wasn't very much doing in that line.

The WITNESS.—(Continuing.) I was working for the Miles City Saddle Company. I am not working for them now; I quit when the weather got warm enough so I didn't have to build fires. That was about May. I was still in the employ of the saddle company in the month of March. It was two or three blocks where I was building fires for them from where this defendant was living. I was in the habit of going over to the defendant's place and building fires for him, and cooking my break-

(Testimony of Richard Burnhart.)

fast there and sitting there for a few hours, watching these fellows doing the work on the building. I wasn't getting any pay for that. I was in the employ of the saddlery company at that time, working at the making of saddles and harness. The reason I was off duty during those hours was that I didn't have anything to do, only I would go on shift every morning to see if I had anything to do. I wasn't working then at my trade; just building fires. I was watching the tools over there in the kitchen; they were in [70] the kitchen. The tools belonged to that house. I wasn't helping them in wrecking that building. I helped take down the bar fixtures, and the cases and stuff like that, and stored them in the barn. I helped Bones and Jay English a few days in doing that. Mr. Willis hired me to do that. He hasn't paid me anything. I worked at that just at odd times, whenever we got enough wreckage out of the road, so we could take the first thing out, about two hours a day.

Whereupon a recess was had in the trial of said cause until one-thirty o'clock P. M. of the same day.

July 12, 1921, 1:30 o'clock P. M.

Court convened pursuant to recess.

Present: Same as before.

The COURT.—You may proceed with the case on trial.

The WITNESS.—I said that I did drink whiskey in Willis' house in the month of March of this year; I don't know who did furnish that whiskey; it was just passed around and I got a drink of it. I don't

(Testimony of Richard Burnhart.)

know whether Henderson sold it or not. I received it from one of them that was sitting next to me; I don't remember just which one of them it was. I was sitting down at the time. I think this was the night of the seventeenth of March; St. Patrick's Day, I remember that. I believe this was that night; I couldn't say. This man I called Bones was in that room. Besides him and Willis, there was Bones and myself and Jay English and another party—I don't know what his name was, and four other parties. Prior to that time and in the month of March, while either Henderson or Gordon was there, I drank whiskey in that house. I helped myself to that, as to that. I got it off of the stand. I don't know what the label was on the bottle. There was a label on it. It wasn't moonshine; it was red whiskey. It [71] was a bottle that looked something like Exhibit "A"; the label looked something like that. It was standing on the little stand in his house there. I believe I was there alone at the time I took that drink. Mr. Henderson was not there then. I didn't understand you right when you asked me if I drank before in that house when either Henderson or Gordon was there. I didn't drink any except on this one occasion when they were in there. I didn't know of Henderson selling any whiskey there. I didn't see any business transactions performed.

Redirect Examination.

(By Mr. MURPHY.)

The WITNESS.—I was working for the Miles

(Testimony of Richard Burnhart.)

City Saddlery Company for wages. I didn't stay there all day at that time; business was quiet, and we divided the time up. I opened up the shop in the morning and waited until the rest of them came, and then I was through for the day. Gordon and Hannah and Henderson acted very much like they were under the influence of liquor when they were at the house.

Witness excused.

Testimony of Paul Drinkert, for Defendant.

PAUL DRINKERT, a witness produced on behalf of the defendant in the foregoing entitled cause, having been first duly sworn, was examined in chief by Mr. Murphy, and testified as follows:

Direct Examination.

(By Mr. MURPHY.)

The WITNESS.—My name is Paul Drinkert. I live thirty-three miles out of Miles City, on Pony Creek. In the month of March, 1921, I was at Miles. Right at that time I wasn't working at all, only on just a few jobs that I could pick up. I know Mr. Willis, the defendant here. I know where his place [72] is on Pacific Avenue.

Mr. MURPHY.—Q. Did you have occasion to be down around his place there in March, 1921?

A. Well, he had a little work there moving stuff out of his building to his barn.

Q. How long did you work for him doing that work?

A. I was around there two or three days.

(Testimony of Paul Drinkert.)

The WITNESS.—(Continuing.) I remember the witness Gordon and the witness Hannah and a man named Henderson coming to the house; I know them boys being in there. I saw them in the house there at Mr. Willis'. I can't just exactly say what day it was; I never paid any attention to that as to the date. I was there in the house when I saw them. I was in there when they come in; I was sitting in the house. I was just sitting there, visiting with Willis. I don't recollect just what time of the day it was. It was some time in the evening; I don't recall what time it was. English was in the house there, and that John, or Dutch they called him; I can't call his name now. I don't recollect his name. Jay English was one of them; I don't recollect their names. There were four of them, I think, came in, including Gordon, Henderson and Hannah; I don't know their names; I don't know either one of them. When they came in, they wanted to get a drink; they wanted to buy a drink. They asked Willis for a drink; he told them he didn't have any. Well, he says "We'll buy one ourselves," and one of the boys pulled out a bottle, a quart bottle; one of the boys that came in there. They kept the bottle with them. It was passed around; they passed it around and I had a drink out of it. They called it moonshine; I don't know what it was; moonshine whiskey, it must have been moonshine whiskey. They didn't stay there very long; I don't just remember how long it was. Mr. Willis [73] did not bring out or pass around any

(Testimony of Paul Drinkert.)

liquor. I did not see any money paid to Mr. Willis for any liquor. They wanted to know if there was any chance to sell anything in town; if there was anywhere they could sell anything. They said they had a plant or a still out in the country somewhere; they had some moonshine to sell, they said. I disremember who was talking about it; I don't know his name, one of the boys there in the room, one of those four in the bunch; I don't know the names of either one of them; I know I was sitting there when he was making these remarks.

Cross-examination.

(By Mr. SLATTERY.)

Q. Well, do you know Henderson when you see him? A. No; I don't know as I would know him.

Q. Would you know three of the men that you say you saw there on the night of the seventeenth of March?

A. I might recognize them if I was to see them.

Mr. SLATTERY.—Mr. Henderson, stand up. Mr. Gordon and Mr. Hannah, stand up, please.

Q. Look at these men, and state whether or not they are three of the men you saw there on the night of the seventeenth? A. I believe both of them are.

Q. There are three of them, one gentleman standing there (indicating)?

A. Yes, I think they are—was all there. I don't recollect, but I think they were there.

Q. Now, then, on the night of the seventeenth of March was the first time you saw them in that house, was it?

(Testimony of Paul Drinkert.)

Mr. MURPHY.—To which we object, if the Court please—

The WITNESS.—Just what time it was, I don't know; I don't remember the day—

Mr. MURPHY.—Wait a minute—

The WITNESS.—I don't recollect exactly what day it was. [74]

Mr. MURPHY.—Withdraw the objection.

Mr. SLATTERY.—Q. Did you see them in there more than one night?

A. They were in there two different nights that I was in there.

Q. Were they succeeding nights?

A. One night I came in and they had this bottle and I had this drink.

Q. One night you had this drink; did one night follow the other?

A. I think it was the second night; yes.

The WITNESS.—(Continuing.) One night followed the other. When they came in there the first night, I couldn't tell you which one it was asked if he could buy a drink; one of them said, "Will you buy a drink?" One of the three said, "I want to buy a drink." They came back and did the same thing the next night. Also the first night they said they wanted to buy a drink. The first night, after having said that, one of the men said, "We'll give you a drink," or words to that effect. He pulled a quart bottle out of his pocket; I couldn't say which pocket, whether it was a hip pocket or a coat pocket. I couldn't say which one of them it was

(Testimony of Paul Drinkert.)

that pulled the whiskey out of his pocket. It struck me as being unusual that these men should come there and want to purchase liquor from Mr. Willis and immediately give him whiskey for nothing; that struck me as unusual. It struck me as more unusual when they came back the next night and did the same thing. I didn't see anybody sell any whiskey there. I don't claim any of these three men sold any whiskey. I couldn't say whether I was in that house on the night of the sixteenth of March; I don't remember the date.

Mr. SLATTERY.—Q. Do you remember being there and discussing with Mr. Willis the fact that some bootlegger had got loose in the District Court of Custer County that day? [75]

Mr. MURPHY.—To which we object, if your Honor please, for the reason that it is immaterial and not proper cross-examination.

The COURT.—Oh, yes; it is to point his recollection to something that is alleged to have occurred. He may answer. Overruled.

Mr. MURPHY.—Note an exception.

The WITNESS.—A. Well, I don't—I remember talking about that around several different parties, as far as that goes. (Continuing.) I discussed that with Mr. Willis that night; I have an idea I did. I remember that Mr. English was also there during that discussion; English was there that night. This other witness who testified, Burnhart, that testified, was also there. I have an idea that Mr. Hannah

(Testimony of Paul Drinkert.)

and Mr. Gordon and Mr. Henderson also heard the conversation.

Mr. SLATTERY.—Q. They were there. In that conversation, didn't Mr. Willis say to you words to this effect: "Well, there is nothing for you fellows to get nervous about; there hasn't been anything done to you yet"?

A. Who? Mr. Willis? No.

Mr. MURPHY.—We object to that as not proper cross-examination.

The COURT.—I think it is. This is cross-examination. The objection will be overruled.

Mr. MURPHY.—Note an exception.

The WITNESS.—(Continuing.) I don't recollect nothing of the kind. I don't recollect anything like that said.

Mr. SLATTERY.—Q. Did you get a drink of whiskey out of a bottle containing a Green River whiskey label in Mr. Willis' house?

A. I did take drinks.

Q. Did you do that in March?

A. No; in the evening when [76] we come from our work, I found a bottle sitting in the house, and I just naturally took me a drink; you might say I stole a drink.

The WITNESS.—(Continuing.) I found a bottle that looked a good deal like this bottle (indicating), something similar. I saw a trunk in the front room. I did not look in that trunk. I did not know that he carried whiskey in there.

(Testimony of Paul Drinkert.)

Redirect Examination.

(By Mr. MURPHY.)

Q. You say you took a drink or did somebody give it to you, or did you just help yourself?

A. Just helped myself.

Q. Your work took you in and out of the house, bringing stuff from the burned building?

A. Yes.

Recross-examination.

(By Mr. SLATTERY.)

Q. What were you carrying from the burned building into this house?

A. Well, Willis had a bar and fixtures.

Q. What were you carrying from the burned building into this house, I say?

A. Well, he had some stuff that we moved over to the—

Q. What were you carrying from the burned building into this house?

A. It was part of a bar and the stuff that was in the burned building.

Q. Where did you put this part of a bar in Mr. Willis' house?

A. I couldn't say just what it was; it was bar fixtures and the stuff that was in the hotel and saloon.

Q. Where did you put them, I asked you, in Mr. Willis' house?

A. Put them in the back storage that he had in the background of the premises that he lived in.

Q. Was that a building separate from the house?

A. Yes.

(Testimony of Paul Drinkert.)

Q. Your duties, then, didn't carry you into the house at all, did they?

A. We would go in there and sit down and rest a [77] while.

Q. You didn't go into the main house with this stuff?

A. Not right in the main house; there was no use carrying this stuff in there.

Redirect Examination.

(By Mr. MURPHY.)

Q. Are you the one they spoke of as Bones?

A. Yes, sir.

Witness excused.

Testimony of Jay English, for Defendant.

JAY ENGLISH, a witness produced on behalf of the defendant in the foregoing entitled cause, having been first duly sworn, was examined in chief by Mr. Murphy, and testified as follows:

Direct Examination.

(By Mr. MURPHY.)

The WITNESS.—My name is Jay English. I live at Miles City. I have lived there four years. In the month of March, 1921, I was doing odd jobs. I was doing some work for Mr. Willis. I started about the ninth or tenth working there, and worked until the twentieth or a little after, a day or so after. I was removing the bar fixtures from the burned saloon. I was taking those things back into his shed. During the course of my work there at that time, I had occasion to go into his house on that

(Testimony of Jay English.)

same lot. I saw the witnesses, Gordon and Hannah, there in that house just the once. That was on about the fifteenth, after supper. Bones and Burnhart and myself and Willis were present in the house. There were four came in there; there was Mr. Henderson and Vic Smith and two other gentlemen. They came in through the front way. When they came in, they first asked for a drink; one of the four asked for the drink; I think it was Henderson. Willis said he didn't have it. Vic Smith spoke [78] up and he says, "Do you want to buy some good moon?" He asked Mr. Willis that. Willis said, "No, sir." There was a word or two carried on; I didn't pay much attention to it, and I walked back in the kitchen for a drink of water. Willis never sold or gave any whiskey to those men that I saw. I had a drink of whiskey or moonshine. I got it from a quart bottle; it was passed to me by Mr. Bones. I couldn't swear who brought that bottle or where it came from; I don't know, but it was brought in from the outside by one of the boys that came in there. I should judge they were there between fifteen and twenty minutes or half an hour.

Cross-examination.

(By Mr. SLATTERY.)

The WITNESS.—I am a painter and carpenter. There wasn't any specified scale of wages when I claim I was working on that burned building; I got seventy-five dollars for the work. I worked for a little better than ten or twelve days. This stuff had all been in the fire. I wouldn't judge there was

(Testimony of Jay English.)

seventy-five dollars' worth of junk left there. I said I never saw any of these gentlemen until the night of the fifteenth of March; it was two days before St. Patrick's; that was just a day or two. It wasn't the sixteenth; it wasn't the day before St. Patrick's; I am sure of that. It was shortly after supper that I saw these four gentlemen come in the house, between seven and eight o'clock. When they came in, Bones, Rogers, Mr. Willis and myself were in there. I am a married man. I had supper that evening at home. I wasn't working; I was discussing what I was going to do the next day. I knew what I was going to do the next day, but there was a safe in there to be moved. [79] That didn't exactly require any discussion after supper on that night. My house was three blocks from Willis' house at that time. We all casually happened to be there. I remained there about three quarters of an hour that evening. There was a fellow named Vic Smith came in with these three gentlemen who stood up in the courtroom. Vic Smith didn't say anything when he came in. I didn't testify that Vic Smith wanted to buy a drink; I said Pearl Henderson. I won't be sure it was Pearl Henderson; one of the four boys wanted to buy a drink; I know it wasn't Vic Smith. The fellow that wanted to buy a drink said, "We would like a drink," wanted to buy a drink. He said that to Mr. Willis. Willis said he didn't have it. Then he asked him if he wanted to buy some moon, this same fellow—no, that was Vic Smith. Willis said no, he didn't want it. I don't

(Testimony of Jay English.)

know whether Henderson said anything. I had known Smith four years. He didn't tell me he had a moonshine still; he said Henderson had it; he didn't want to sell himself direct. It was Henderson had the still. He said Henderson had moonshine to sell. It was about three minutes after that that I had a drink. The whiskey was brought in from the outside. I couldn't swear who brought it in. I know it was brought in because there was no moon present when I came, because I had been there. I hadn't even seen a glass in the kitchen. I hadn't looked in the trunk that Willis had in the front room. I know there was no moonshine or whiskey in the house when I came in because Willis never left his chair; that is the only reason I have for saying that. I took a drink of it when it came around. Mr. Bones [80] passed it to me. I couldn't swear who purchased it. That is the only time I saw those men in that house.

Witness excused.

Testimony of Elizabeth Drake, for Defendant.

ELIZABETH DRAKE, a witness produced on behalf of the defendant in the foregoing entitled cause, having been first duly sworn, was examined in chief by Mr. Murphy, and testified as follows:

Direct Examination.

(By Mr. MURPHY.)

The WITNESS.—My name is Elizabeth Drake. I live in Miles City. I know the defendant, Willis. I have known him about seventeen or eighteen years.

(Testimony of Elizabeth Drake.)

I know where he lives in Miles City. I am ranching for a living and I cater some. I had occasion to go to Mr. Willis' house one day last March, 1921. I remember the day; it was the twelfth of March. There were two men at Willis' house when I got there. Afterwards I knew one was Henderson and one Gordon. I saw the witness Gordon, who testified this morning; he was the one. The man who stood up in the back of the courtroom a little while ago, Henderson, was the other one. Mr. Willis was there. I went to Mr. Willis' house because I had to borrow some money to purchase some horses with. I had some eggs with me. When I went there there was nothing said about any intoxicating liquor of any kind. There were no drinks of whiskey nor any other liquor served me. I did not see anybody have any liquor. I stayed there about fifteen or twenty minutes. I got the money I went to borrow. When I left I went home, and these two men went down there and I cooked them a dinner, at least they helped me to cook it. That was at my house; that was just a little ways from Willis'. [81]

Cross-examination.

(By Mr. SLATTERY.)

The WITNESS.—I am a Misses. I remember distinctly on the twelfth of March going to Mr. Willis' place, of course. When I went in the house, Mr. Henderson and Mr. Gordon were in there, as I heard them testify. I don't recall that Mr. Henderson ordered a drink of whiskey and that Mr. Willis got up and went over to a little shelf and took off a

(Testimony of Elizabeth Drake.)

bottle that looked a good deal like this (indicating). He did not pour it out of the bottle into a glass and hand me the glass and that I lifted it up before him and said, "Here's how." I do remember that those two men went to my place and I cooked them some eggs. They didn't walk to my house with me. It was at my suggestion that they did not walk to my house with me. I suggested that because people around there talk so much. They would talk if they saw me taking men to my house. I did not know that by experience; I assumed that. However, these men went to my house and I did cook some eggs for them. While they were in my house, they did not purchase any whiskey from me.

Mr. SLATTERY.—Q. Isn't it true that you sold to Mr. Gordon and Henderson a drink of whiskey similar to this, or Canadian Club whiskey?

A. No, sir.

Q. Isn't the fact about that also that after they had drunk that drink, you then reached behind the stove and picked up a bottle of moonshine—

Mr. MURPHY.—We object to that line of cross-examination on the ground that it is improper, and immaterial, so far as this case is concerned.

The COURT.—I think it is related to part of the transaction which the witness testified to. He has a right to show all the circumstances and ask her if other things occurred. Objection overruled. [82]

Mr. MURPHY.—Exception.

Mr. SLATTERY.—Q. I am referring—

A. No, sir.

(Testimony of Elizabeth Drake.)

Q. I hadn't finished my question. That you reached behind this stove after they came there and picked up a bottle of moonshine and gave them a drink of moonshine whiskey out of that bottle that you had there? A. No, sir.

Q. You don't remember that? A. No, sir.

Q. It is a fact that you also are a defendant in a criminal action pending in this court and set for trial on the fourteenth of this month, in which you are charged with violating the National Prohibition Act; isn't that true?

Mr. MURPHY.—To which we object as immaterial.

Mr. SLATTERY.—For the purpose of showing her interest, if the Court please, in testifying in this case.

The COURT.—I think I can see where counsel might make it proper cross-examination for the purpose of showing the interest of the witness, if he is intending to ask whether these witnesses are to be witnesses for each other, or the defendant or his witnesses will appear in her behalf. We must assume that he is proceeding on that theory. The objection is overruled.

Mr. MURPHY.—Note an exception.

The COURT.—It may be noted.

Mr. SLATTERY.—Q. And in the trial of your case, Mrs. Drake, you expect to use as witnesses some of the persons who are witnesses here in behalf of Mr. Willis? A. Only Mr. Willis.

Q. You expect to use Mr. Willis as your witness?

(Testimony of Elizabeth Drake.)

A. Yes, sir; just the one case.

Mr. MURPHY.—We offer Defendant's Exhibit One in evidence, which was identified by the witness Gordon on his cross-examination as having been signed by him. It is a statement contradictory to the statement he gave on the trial this [83] morning.

The COURT.—It wouldn't make it admissible in the manner in which it was presented. Objection sustained.

Mr. MURPHY.—Note an exception.

Testimony of Frank Hunter, for Defendant.

FRANK HUNTER, a witness produced on behalf of the defendant in the foregoing entitled cause, having been first duly sworn, was examined in chief by Mr. Murphy and testified as follows:

Direct Examination.

(By Mr. MURPHY.)

The WITNESS.—My name is Frank Hunter. I am an attorney at law at Miles City, Montana.

Mr. MURPHY.—Q. Were you present in court in Custer County, in the month of April, 1921, when Mr. Gordon was then accused of the same acts as he now stands accused of in this court?

Mr. SLATTERY.—I object to that on the ground that no proper foundation has been laid, it calls for a conclusion of the witness, and is not the method of proving the fact.

Mr. MURPHY.—I will reframe the question.

(Testimony of Frank Hunter.)

Mr. SLATTERY.—I will consent to the substitution of the word “tried” and yet renew my objection.

Mr. MURPHY.—This is preliminary examination on a question of impeachment which I laid the grounds for.

The COURT.—Objection overruled; he may answer.

The WITNESS.—Yes.

Mr. MURPHY.—During the examination of Gordon, who was then a witness, did he testify at that time that he didn’t know whether it was whiskey or moonshine?

Mr. SLATTERY.—May I ask a preliminary question in order to settle as to what he is inquiring about?

The COURT.—The witness Gordon testified that in a proceeding [84] arising out of these same transactions, as I understood it, against the defendant in Miles City, in the State Court, Gordon was asked—on April, 1921, if he did not testify in that case that whatever he got out of the defendant’s premises, he did not know whether it was moonshine or not, and he answered that he did not remember that he so testified; I assume that is the foundation for the question. You may proceed.

The WITNESS.—A. Yes; he said that he didn’t know whether it was moonshine or whiskey; he couldn’t tell.

(Testimony of Frank Hunter.)

Cross-examination.

(By Mr. SLATTERY.)

Q. As a matter of fact, he testified in that search warrant proceeding that he got both, didn't he?

Mr. MURPHY.—We object to that as not cross-examination. We haven't gone into the search-warrant proceeding.

The COURT.—Make it clear to the witness that it was the same matter.

Mr. SLATTERY.—Withdraw the question.

Q. At this time that you heard Mr. Gordon testify, it was in a search-warrant proceeding against Mr. Willis, wasn't it?

A. The case was so entitled; yes, sir.

Q. And it was a proceeding in which they had seized out of his house a quantity of whiskey; is that true?

A. That is the record of the testimony.

Q. This was in April?

A. April sixteenth, 1921.

Q. Was that search, do you know, was the search made in March that we were discussing in this case?

A. There was only one search that I know of.

Q. You don't know whether—

A. Yes; it was this search. That was what the testimony showed at that time.

Q. In that proceeding, the Court there found against Mr. Willis, did it not? [85]

Mr. MURPHY.—To which we object as not being cross-examination.

The COURT.—That isn't material; I don't see

(Testimony of Pearl Henderson.)

that it is proper cross-examination, no matter what disposition was made of the case. Objection sustained.

Witness excused.

Mr. MURPHY.—Defendant rests.

**Testimony of Pearl Henderson, for the Government
(In Rebuttal).**

PEARL HENDERSON, produced as a witness in rebuttal on behalf of the Government in the above-entitled cause, having been first duly sworn, was examined by Mr. Slattery, and testified as follows, to wit:

Direct Examination.

(By Mr. SLATTERY.)

The WITNESS.—My name is Pearl Henderson. I am a married man and have a family. My home is at Forsyth, Montana. I have been in the cattle business down there all my life. In the month of March of this year I was in the employ of the City of Miles City, Custer County, in this State. I know the defendant, J. W. Willis. I know where he lived in Miles City in March of this year; I know where his residence is. It was a little green house near a burned building, at five eleven Pacific Avenue. I was in that house in the month of March of this year.

Mr. SLATTERY.—Q. What is the first time you were in there?

Mr. MURPHY.—To which we object as not

(Testimony of Pearl Henderson.)

proper rebuttal testimony. This is part of their case in chief.

The COURT.—The testimony may be competent either in chief or on rebuttal. It serves a different purpose, however. If it is submitted in chief, it is evidence of the facts which it tends to prove in support of the prosecution for all purposes; but if it is submitted in rebuttal, it is for the [86] purpose of neutralizing, if it can, the testimony of the defendant, and it is still competent.

Mr. MURPHY.—Note an exception.

Last question read by the stenographer.

Mr. SLATTERY.—Q. That is in Willis' house?

A. About the third day of March.

Q. And who, if anybody, introduced you to Mr. Willis? A. Vic Smith.

Q. Vic Smith; on the second day in March that you were in there, did the defendant Willis sell you any whiskey?

Mr. MURPHY.—To which we object—may we have the same objection to all this line of examination?

The COURT.—You may have an objection noted to all testimony thus adduced by this witness.

Mr. MURPHY.—Note an exception.

The COURT.—The objection will be overruled, and an exception may be noted to all this line of testimony.

The WITNESS.—A. Yes, sir. (Continuing.) Vic Smith was there when he sold it to me. I was there after the second of March; I don't remember

(Testimony of Pearl Henderson.)

exactly the date, but I was there. I was at Willis' place and I don't remember of missing a day from then, from the second of March till the nineteenth. I don't remember of missing a single day out of all that time. There was not a single day during that time when the defendant Willis did not sell me whiskey. Every time that I was there between those two dates, I purchased whiskey from the defendant Willis. The whiskey that he sold to me he got from the back end of the room in front of a cupboard there or a clothes closet or something, in the back room. I remember of seeing a shelf in the front room. I remember of seeing a bottle [87] there with a Green River whiskey label on it. He charged me four bits a drink, fifty cents a drink. I never on any occasion offered to sell any whiskey to Mr. Willis. I heard his testimony here in that respect. I deny that. I remember being there in the month of March, about the sixteenth, when a man by the name of Bones was there, together with other persons; I believe I do; I know I was there at the time that Bones was there. I remember a conversation had there that night about a bootlegger having gotten loose in the District Court that day. Willis just said they didn't have any kick coming; that they hadn't done anything to him yet.

The COURT.—Q. Done anything to whom?

A. The fellow that they tried.

Mr. SLATTERY.—Q. During the month of March, between those dates, did you see a man in there by the name of Vias? A. Yes, sir.

(Testimony of Pearl Henderson.)

Q. Did you, or did you not, see him purchase any whiskey from Mr. Willis? A. Yes, sir.

Q. How was it—what was the whiskey in?

A. In a can.

Mr. MURPHY.—This is objected to as improper; it was never brought out in the case in chief nor on cross-examination.

The COURT.—I assume that this is some time in March; the defendant has testified that he didn't sell any at that time. Objection overruled.

Mr. MURPHY.—Note an exception.

The WITNESS.—(Continuing.) Mr. Gordon was with Mr. Vias and I in there. Mr. Vias paid Mr. Willis fifteen dollars for a quart of whiskey. The bottle was labeled; it was a quart of Blue Ribbon whiskey. I noticed three Green River labeled bottles there at that time. In the month of March I remember seeing Mrs. Drake in Mr. Willis' house along about [88] the tenth or twelfth. Mr. Gordon was with me when I saw her in the house. After Mrs. Drake came into the room, I bought a drink for the four of us of Mr. Willis; Mr. Willis furnished the whiskey. The witness, Mrs. Drake, took a drink. Mr. Willis handed her the whiskey. When he handed it to her, she said, "Here's a go," and drank it. After she left the place, Mr. Gordon and I went to her place that same day. While we were up at her house, she cooked some eggs for us. We ate them there. On that occasion, while we were in Mrs. Drake's house, we purchased some whiskey from her. I paid her fifty cents a drink

(Testimony of Pearl Henderson.)

for three drinks, and she rushed around the door behind the stove and got a bottle and gave me a drink of moonshine, and told me to try that. The whiskey she sold me for fifty cents a drink was Canadian Club. I never at any time in Mr. Willis' house gave him or anybody else a drink of whiskey, only what I bought from him. I never at any time carried into the house of Mr. Willis any whiskey; I never had a bottle with me of any kind. I never saw Gordon hand out or deliver or give anybody a drink of whiskey or moonshine in Mr. Willis' house. All of the whiskey I got in Willis' home I got from Mr. Willis, the defendant in this action.

Mr. MURPHY.—If your Honor please, I move to strike out the testimony of this witness as not proper rebuttal testimony, save as to the one question where he testified that he never had offered for sale any whiskey to Willis as to the times he was at the cottage there.

The COURT.—Motion denied.

Mr. MURPHY.—Note an exception.

Witness excused. [89]

**Testimony of T. R. Gordon, for the Government
(Recalled in Rebuttal).**

T. R. GORDON, recalled as a witness on behalf of the Government in rebuttal, having been heretofore duly sworn, was examined by Mr. Slattery, and testified as follows, to wit:

(Testimony of T. R. Gordon.)

Direct Examination.

(By Mr. SLATTERY.)

Q. You recall having testified about Mrs. Drake having a drink of whiskey in Mr. Willis' place in March of this year? A. Yes, sir.

Q. Now, after drinking there on that occasion, tell the jury whether or not you and Mr. Henderson went down to her house? A. Yes, sir.

Mr. MURPHY.—Objected to as not proper rebuttal testimony.

The COURT.—Objection overruled; an exception may be noted.

Mr. MURPHY.—Exception.

Mr. SLATTERY.—Q. While in her house, Mrs. Drake's house, state whether or not she sold any whiskey to either yourself or Mr. Henderson.

A. Yes, sir.

Q. Who paid for it? A. Mr. Henderson.

Q. How much did he pay?

A. I wouldn't say what he paid for it; I didn't see that.

Q. Can you tell the jury what kind of whiskey it was that was bought from Mrs. Drake at that time?

A. It came out of Canadian Club quart bottle; it had a Canadian Club label on it.

Mr. MURPHY.—The same motion as to the previous witness' testimony.

The COURT.—And a like ruling with respect to this testimony.

Mr. MURPHY.—Exception.

Witness excused.

Mr. SLATTERY.—The Government rests.

Whereupon counsel for the respective parties presented their argument upon the law and facts to the Court and jury, and the Court instructed the jury as follows: [90]

Instructions of Court to the Jury.

Hon. GEORGE M. BOURQUIN, Judge:

Gentlemen of the Jury: You have heard the evidence and the argument of counsel, and now it is for the Court to deliver to you what are termed the Instructions or Charge. That is in the main to advise you of what the law is, so that you will be able to determine from the facts whether the law has been violated. The Court is responsible for the law, and it is your duty and obligation to take the law from the Court. There is a good reason for that: it is so that all men may be tried by the same law, for the Court always gives the law the same. If juries were permitted to take their own view of the law, one jury might to-day have one view, another jury to-morrow have another view of the law, and yet another jury have a different attitude with respect to the law, and men would not all be tried by the same law, but by as many different kinds of law as different juries conceived it to be; but when it comes to the facts, and what the evidence proves, what witnesses you will believe, what weight you will give to the testimony, what logical inferences you will draw from the circumstances in the case—that is entirely for you to determine. Your responsibility begins there; you determine the facts for

yourselves. The Court cannot tell you what the facts are, nor bind you to its view of the facts as given by the witnesses who appear before you. Courts are privileged to comment upon the credibility of witnesses and upon the weight of the evidence, and upon what is [91] proven and what is not proven, in the Court's judgment; but that is not in an effort to bind you to like views, for it cannot, and the Court has no right to bind you by its comments; and when it is done, it is solely for the purpose and object of aiding you to reason the case out to a correct conclusion.

I want to remind you, as you sit in the jury-box, that you are like the Judge in the exercise of his duties; you are bound by the same oath and act under the same obligation and sacred duty to judge fairly and wisely, except that your duty relates to the facts, and the Court's to the law. You are officers of the court just as much as the Judge is. You are judges of the facts; I am judge of the law. Both of us are bound by our oaths to fulfill our duty, and you must remember that we both have rights and obligations, as well as power; but we never exercise our power except within the strict lines of our duty. For instance, the Court might discharge this man, this defendant, from the bar of the Court, and no one on earth could again try defendant for this offense; but the Court has no right to do that. So you, after you have reviewed the evidence, may believe him guilty beyond a reasonable doubt, and yet acquit him, or not so believe and yet convict him. You have no right to do it. By

your oath, you will remember, you swore that you would a true verdict render in accordance with the law and the evidence; not in accordance with your own likings, which I will, of course, not intimate is not in accordance with the law and the evidence, and not in accordance with your sympathy or prejudice; but your oath is that you will a true verdict render in accordance with the law and the evidence, setting aside any and all bias or prejudice you might [92] entertain. Never forget that.

In respect to the law involved in this case, the famous Volstead Act, passed by Congress to carry out the provision for national prohibition, it is to effectuate a constitutional amendment, and it is just as much a law as any other law upon our statute books. We all know that no law ever written is being violated or has been violated to a greater degree than the Volstead Law is now; but that is only the more reason why it must be enforced, as long as it is the law, with diligence and faithfulness, so that this tendency to violate this law may not, as it inevitably will if its violations are condoned or permitted to continue unpunished, tend to encourage the violation of other laws; because, when people discover that one law may be violated with impunity, that courts and juries are impotent to enforce the law, there is a general tendency to transgress other laws, a failure to give due observance to law, and, as a result, a breaking down of morale. In other words, if a man may break the law and escape the consequences of his act, people say, "If one set of men can violate one law and escape, what

is the use of the rest of us observing any law?" So it leads to the violation of other laws, and a breakdown of the morale of the people.

Another thing in reference to this Volstead Act: People comment upon the fact that with many people it is not a popular law; many people are opposed to its spirit. They argue about this way,—that men drawn in the jury-box in a case involving a prosecution for the violation of its provisions, will return a verdict of acquittal; that they are against the spirit and operation of the law; [93] that it is not right, so they will fail to enforce the law, and will permit the offender to escape. They argue to themselves further: "If I am accused of a violation of this law, it will only be necessary for me to swear to any sort of a fictitious defense to give the jury a plausible excuse in order to secure my acquittal."

Gentlemen of the jury, that is a thing that must be suppressed as not well founded. I will say that in the Federal Court I have not found it to have any basis of truth, so far as juries are concerned. Of cases that have come up in this Court, there have been as many convictions that were merited under this law, as in respect to any other law. Why do I say this to you? Not to say that this defendant ought to be convicted; not at all. I merely wish to impress upon you the seriousness of your duty in every one of these cases as in any other case that may be brought before you, and that you give to it the same serious, thoughtful and honest consideration; that you execute and carry out your duty, your

obligation and your oath, whatever the verdict may be.

You must remember that you are not responsible for the fate of this defendant; if the defendant is guilty, he is responsible for the consequences of his voluntary acts. He has no right to come into court and expect that any jury will inevitably accept his version rather than the prosecution's, find for him and against the prosecution. Both sympathy and prejudice are enemies of justice. Remember, your honor, your duty to the people, whose servants you are, and your oath require faithful performance of duty in this, as well as any other case.

Now, gentlemen, the law in this case provides that any [94] room or building wherein intoxicating liquor is sold or kept in violation of the Volstead Act is a common nuisance, and any person or persons who maintain such a place are guilty of an offense which, upon conviction, involves a punishment of a fine of not more than one thousand dollars, or imprisonment for not more than a year, or both. The Court, and not you, however, will fix the punishment, and you will see it leaves very much to the discretion of the Court. Of course, you have nothing to do with that, and I state it to you merely for your information, and you are assumed to know it anyhow.

The information in this case charges this defendant with maintaining such a common nuisance—a place where intoxicating liquor, to wit, whiskey, was being sold in violation of law for beverage purposes. Any intoxicating liquor sold for beverage purposes

is in violation of the law. There is no exception in the law that permits such sale to be made.

A nuisance is defined to be a place where unlawful acts are carried on to such an extent that they actually annoy the neighborhood; but, in contemplation of law, annoying the neighborhood does not necessarily mean a noise or audible disturbance; it may be constructive annoyance. If we find a series of unlawful acts committed, like disorderly houses, gambling or prostitution, that stamps the places wherein committed, as nuisances; and that is the situation in this case,—if this defendant sold liquor in that place—not a single, isolated sale, but a series of sales—that place is a nuisance within the meaning of the law.

This defendant is presumed to be innocent of that offense until he is proven guilty beyond a reasonable doubt, and that presumption must be had in mind by all [95] of you throughout the trial. It simply means that you do not know, when the trial starts, whether he is innocent or guilty, so we will presume he is innocent, and with that status in mind, you, the jury, will weigh the evidence against him and the evidence for him to determine whether, in spite of the presumption of innocence, he is guilty as charged, beyond a reasonable doubt.

The burden is on the Government to prove that the defendant is guilty, beyond a reasonable doubt, before you can convict; but, when you ask yourselves whether that burden is sustained, you do not look to the evidence of the Government alone; you take into consideration the evidence of the defend-

ant also,—all of the circumstances in the case, and, considering and weighing the whole, determine whether or not the evidence taken as a whole satisfies you that the defendant is guilty beyond a reasonable doubt. If it does, you should find him guilty; if it does not, you should find him not guilty.

Remember the proof must only go to guilt beyond a reasonable doubt. It is impossible to prove everything beyond all doubt. A mere suspicion that after all the defendant might be innocent is not sufficient to warrant an acquittal; therefore, the law does not require absolute proof, because that is impossible. Nothing can be proven in court except to a degree of probability; in a criminal case it must be a high degree of probability, sufficiently high to satisfy you that the defendant is guilty beyond a reasonable doubt.

To define the term “reasonable doubt” is not easy, but courts attempt it. These words ought to convey as [96] much the meaning as any other manner of expressing the idea. You know what it is to doubt, and you ought to know whether, in this case, you have a reasonable doubt of the defendant’s guilt; but others attempt to define it, and I will define it this way: After you have reviewed all the evidence and all the circumstances, if you have a judgment that persists in staying with you that, to a high degree of probability, the defendant is guilty, and to such an extent that you are satisfied beyond a reasonable doubt of his guilt, it is your duty to convict. In one case the Supreme Court has said that “if the high degree of probability is such that

you have no reasonable doubt of the guilt of the defendant, then it is your duty to convict.”

You are the exclusive judges of the credibility of witnesses, and of the weight to be given to evidence. In the beginning, not knowing whether a witness will testify truthfully, whether he will tell you the true facts or not, there is a presumption which the law creates, the presumption that he speaks the truth; but you are the sole judges of his credibility; unless you may honestly see a reason why you should not believe him, the law is you presume that he is telling the truth. You are the judge of his credibility; you observe his demeanor on the stand, the manner in which he testifies, whether he appears to be telling the truth, or otherwise; whether he is frank in his statements, or seems desirous of concealing or hiding something, indicating that he is not telling all that he knows, or the full truth; whether he has any interest or any motive in not telling the truth; his character, in so far as it appears; his disposition, so far as it is disclosed to you; this may aid you in arriving at your determination as to whether a witness is speaking the [97] truth. Does he state what is reasonable, in view of all the circumstances of the case? Reasonableness is the great test of truth. Is he contradicted by himself or other witnesses? Do you prefer to believe his story? It is for you to say which one you believe. It may be that he is contradicted by circumstances; sometimes circumstances speak more loudly than words. It is a maxim of law that

witnesses may testify falsely, but circumstances will tell the truth.

If you believe that any witness has testified falsely in any matter before you to-day, you ought to distrust all the rest of the testimony of that witness, and, if your judgment approves, you have a right to reject all of the testimony of that witness; if he has testified falsely in one thing, how will you determine whether he has not testified falsely in other things? It is true that if a witness testifies from mistake incorrectly, that is not what is meant by "falsely." Mistakes in dates, for instance, are not always material in law; a witness might easily become confused in his memory of dates. Falsity usually conveys the idea of intentionally testifying falsely. Of course, if a witness is mistaken in some of his testimony, you want to scrutinize it carefully and see if he be not mistaken in other parts of it.

The status of a witness applies also to the defendant when he testifies in his own behalf, insofar as he is not contradicted by his own testimony or that of other witnesses. The law says that he shall have the benefit of that presumption that he speaks the truth in the beginning; but in his case, as in that of any other witness, you might see an honest reason why you will not presume that he speaks the truth; you might see it in any or all the ways that would apply to any other [98] witness; you might see it in his self-interest, in the very fact that he is the defendant, that he is charged with a serious offense with consequences grave enough to him, in any event, if convicted. Ask yourselves whether that

self-interest which is the mightiest influence that moves all men, has caused the defendant to deviate from the truth in the hope to deceive you and escape the consequences of his crime, if he committed it.

Gentlemen of the jury, the testimony in this case has covered a pretty wide range, considerable ground by quite a number of witnesses; yet, after all, it converges about a single issue: Did this defendant sell whiskey in his house in Miles City, as has been testified to by Gordon, by Hannah and by Henderson—I think those are all the witnesses who testified to the sales?

The prosecution first proceeded at considerable length to show to you by the Mayor of the city, the City Attorney and several others that, with the aid of a search warrant, his place had been visited, and a great deal of whiskey had been found there, both moonshine and bonded goods; both illicit whiskey and licit whiskey, lawful whiskey and unlawful whiskey. That stands undisputed; that portion is conceded by the defendant himself, I believe. The whiskey was there, though he denies that he owned any of the moonshine or illicit whiskey that was found in the cupboard in the kitchen.

After the case is so far established that the liquor was there, which of itself is not sufficient to constitute the offense charged, then the Government introduces Gordon and Hannah, who testify to having repeatedly visited that place last March and purchased whiskey from this defendant at fifty cents a drink—a profitable trade, if it can be [99] carried on for any length of time. They were in

the employ of the county and city. The Court incidentally stated that it was an honorable occupation; it is a fact that all men do not care to follow the vocation of one who has a duty to detect criminals; but it is like many vocations we do not care to follow, yet which are still necessities. Most men do not care to take up the work of a garbage collector or scavenger, but we have quite a distinct need for them, and if they perform their duties well and do good work, their occupation is as honorable as that of any man's, no matter what it is. They tell you they were hired to do this, and they went there. They had a right to seek out these places where this whiskey is being sold, and that is the only way the law can be enforced; you know that the real customer, who is constantly seeking illicit liquor for the sake of his appetite, is not going to betray the men who sell to him; because if he does, his supply is cut off, his appetite disappointed, and perhaps his cravings really cause him suffering. These men who thus seek for this evidence are, in another sense, no more than policemen, no more than sheriffs, no more than marshals; for policemen, sheriffs and marshals have their duties to hunt for and detect crime whenever they can, consistent with their other duties; so beware of being prejudiced by the words "detective," "stool-pigeon" or anything of that kind, for they are thrust upon you in every case, with the idea that you are not sufficiently strong of will to resist the prejudice which, in many men's minds, these words do create.

These two men, Gordon and Hannah, told you of

being at this defendant's house, and of seeing there numerous other men, of hearing the voices of others in another room, of seeing one woman there, and of hearing the voice of another [100] in an adjoining room. They tell you of how the defendant prevented them from seeing what was going on in the front room when they were in the kitchen on one occasion and several other parties were there. Smith and Henderson were also along, I believe. They detailed, at considerable extent, quite a number of purchases of liquor early in March, the dates of which I will not relate to you again; because, as I told you before, dates are not material. They may allege one date in an information and prove another date. The reason is that men's recollection of dates are imperfect and notoriously bad. You may recollect an incident which happened all your life; yet you forget the particular day of the month on which it happened. One date may be alleged in the information and the prosecution may prove another, and if the jury believe the offense was committed on a date or dates other than those alleged, they still have their right and duty to convict accordingly.

They tell you, these witnesses, Gordon and Hannah, of buying both moonshine and whiskey of the kinds which were thereafter found by Farr, Wilkinson and several others who raided the premises a few days later, on the nineteenth, I believe, of March. That is the case for the prosecution.

Now the defense introduces its case. The defendant tells you, "Yes, I had this lawful whiskey, these bonded goods, in my premises. I had them from the

time when I had kept the saloon adjacent to this house; had it buried in the barn, and after I came back from California, I brought in into the house.” He tells you further that he had nothing to do with the moonshine or illicit whiskey, and didn’t know of the whiskey that was in the cupboard; he had the house rented to Kimball while he was in California; Kimball lived in [101] the house during the time Willis was in California. The defendant stated that he came back to Miles City on the sixteenth of February, and stays until March nineteenth, over a month, and yet had not had access to that cupboard; and yet the witness, Henderson, who went on in rebuttal, testified that the whiskey that he got at one time did come out of the cupboard in the rear room. When the officers were there that night, they say that he told them that he had no key to the cupboard; or I think they said that they did not know whether he spoke of a key or not, but he refused, as they put it, to open the cupboard, and they then forced it open and found the moonshine. The defendant insists that that was Kimball’s moonshine, and that it had been placed there without his knowledge. That will be a question for you to determine. Ask yourselves this, gentlemen: Did he see the impossibility of denying having the liquor at all, in the face of the testimony of Farr and Wilkinson, Holmes and others, who found it there, and therefore admitted part of it about having possession of the bonded whiskey, and laying part of it onto Kimball about having no knowledge of the moonshine or illicit whiskey in the cupboard to which

he testifies Kimball had the key, and insisting that he did not sell them whiskey, as Gordon, Hannah, Henderson and others testify. I say you can ask yourselves. The Court doesn't say that he did, the Court doesn't intimate that he did; and whether or not it is an ingenuous defense or a truthful one is entirely for the jury to determine. He denies that he sold any whiskey at all to Gordon and Hannah, and says they came there with Smith and others, asking for liquor; that he told them he had none, when they produced a bottle of moonshine and gave him a [102] drink and several others. He admits they came there a series of days, and had much the same transaction each time; that they brought liquor with them; that they got none from him; that he had liquor there in his trunk, but that he never responded by treating again. Ask yourselves this: whether Smith, who took them there and introduced Henderson and the others to the defendant in the first place, whether or not Smith was the agent of the defendant. Ask yourselves how these officers would find their way there if they were not taken there by someone who knew the liquor was there. Why did the defendant tolerate these men around there unless they were customers, whose patronage, at fifty cents a drink, was a profitable one? It may be reasonable that these officers might have been any place once and have asked for liquor and be denied; but why should they keep returning unless they were securing the evidence that they were entitled to secure? Defendant says further that they offered to sell him moonshine; they asked him if he wanted to buy some;

that he said no; that he was going away soon and did not want to take the chance of detection and prosecution. The defendant introduced witnesses further testifying, and the defendant himself testified, that he was salvaging part of his hotel, and that he had men working there in the vicinity of his house to account for the numbers of men who Gordon and Hannah say they saw around there. Question yourselves as to whether it is a truthful defense or a subterfuge to explain the presence of the numerous men who were around there whenever Gordon and Hannah happened to be there. It is question, for the jury entirely, and it may well be that the testimony of the defendant and those witnesses of his was true to the effect that he was salvaging the contents of the burned hotel; and ask yourselves [103] whether this is a corroboration of his statement that he did not sell liquor to these men. Corroboration means circumstances or the testimony of a witness that tend to make more true or probable the evidence of another witness or some material evidence in the case. Everything that is offered in the nature of corroboration is not necessarily corroboration. It recalls to my mind that Judge Knowles used to illustrate the meaning of the term in this way: If a witness takes the stand and swears before you that down the street he saw an elephant climbing a telegraph-pole, and as an evidence of the fact, he can take you down and show you the pole, the mere fact that he showed you a pole would not constitute corroboration, or lead you to believe his story as true. You are not obliged to believe that a thing is so be-

cause a witness says it is so. On occasion there may be men who will swear to anything for both plaintiff and defendant, and it is for you to determine which of them is telling the truth. That is what you are here for—to penetrate these evasions and contradictions and arrive at the truth, in order to execute the law, whether it is a verdict of guilty or acquittal which you find; because a verdict of acquittal executes the law just as much as a verdict of guilty, if you are not satisfied that the defendant is guilty beyond a reasonable doubt. The law says you must acquit him in a proper case, as well as convict in a proper case.

The defendant proceeds further with his defense: he has Burnhart testify. Burnhart testifies to being a harness maker; said that he lived a while last March with the defendant. He was employed at a harness shop, but he stayed at the defendant's place a considerable portion of the time; [104] that he watched the men who were salvaging the burned building; that he watched the house when they were salvaging part of the old hotel and the effects from the old hotel which had burned there sometime before that. He told you that these men, Gordon and Hannah, came there, and others also; I believe he said that they asked for a drink, which was denied them, and that there was a bottle passed around, and that he drank out of it, but he doesn't know who produced that bottle. He didn't see anyone sell any liquor; didn't see the defendant give anyone any liquor or sell any liquor. The question for you to determine is: Is Burnhart desirous of serving the

defendant and a little careful in seeing how far he might go in testifying for the defendant with safety, or, is he telling the truth in all of these particulars?

English's testimony is much the same. He is one of those who were engaged in salvaging the hotel, and I say to you that there is nothing improbable or unreasonable in that. He says Gordon, Smith, Hannah and Henderson came there about the fifteenth of March, and asked the defendant and English to furnish them with a drink. The defendant said he had nothing, and that then one of these men produced the bottle and passed it around, and they all drank. He then says, English does, that he infers one of these men who came in there produced the bottle, because when it was going around, he had not seen the defendant get up out of his chair, so he infers the defendant did not get it anyway, and one of these men had it.

Mrs. Drake testifies to being there on one occasion with some eggs, to borrow some money. There was nothing said while she was there about whiskey or liquor; she [105] didn't see any or get any. You remember Gordon and Hannah said she was there, and that she had taken a drink, and that one of them had paid for the drink, or his round, as they called it, and that the defendant had furnished the liquor. She also was asked on cross-examination, in order to demonstrate her interest in this case, if she had not sold any liquor, and if the defendant was not to be a witness for her in a later case in which she was to be a defendant, and she said that she had not sold any, as I recollect it. She answered that she is

to be tried, and that the defendant is, as she expects, to be a witness for her. It is a question for the jury to determine whether it is a case between the defendant and this witness of "You scratch my back, and I'll scratch yours." The Court doesn't say so, or doesn't intimate so; but she is a witness for the defendant, and she expects that he is to be a witness for her. You have a right to ask yourselves whether that does not incline her to favor him with her testimony in the hopes that he will favor her.

Drinkert testified also to being there and working on the salvaging of the hotel; that he was in the house when Gordon, Hannah and Henderson came there; perhaps he said Smith also; that they wanted to buy a drink, and that the defendant said he didn't have any there. He says that one of those who came pulled out a bottle, or he saw a bottle pulled out, and that it was moonshine, and that he saw the defendant given no money or receive no money, and that they asked the defendant if they could sell him some moonshine; that Henderson had a still out in the country, and that the defendant said no, he wouldn't buy any. Drinkert assumes to identify the three witnesses as they [106] stood up in the rear of the court room, Gordon, Henderson and Hannah. He told us that he was there two nights; that these men all came back the next night, and he says that they again wanted to buy a drink, but that there was none sold in there; and that there was some talk about a bootlegger who had been tried and gotten away, which I cannot see any particular significance in; perhaps you can.

In rebuttal, the prosecution produced Henderson. They had a right to produce him in rebuttal. He testifies to much the same matter as Gordon and Hannah, except that he also testifies to being there much more frequently; he being in the employ of the state from the second to the nineteenth. I want you to observe this, in the matter of the testimony of Henderson in rebuttal: it, of itself, does not tend to prove, or is not evidence that the defendant sold anything primarily; it only goes to offset and neutralize, if, in your judgment, it succeeds in that purpose, the testimony of the defendant that he did not sell any liquor. That is to say, it is only to rebut the defendant's testimony. You might be of the view that, on the testimony of the prosecution, including Gordon, Hannah and the others, a case had been made against the defendant, but after you heard the defendant's testimony, as the case then stood, you might say that the defendant's evidence was sufficient to raise a reasonable doubt of his guilt. Then, if you find in the evidence of the witness Henderson enough to destroy the reasonable doubt of the defendant's testimony, that is the office of the testimony of Henderson, and none other. Henderson tells you that he was there with these men; that the defendant sold them liquor at that time; that he once saw the defendant get it out of the [107] cupboard in the rear room—and you will remember that the defendant testified that he did not then know the contents of that cupboard—and once from the other room. Henderson says he never offered to sell any liquor to the defendant; Gordon says he never offered to sell

any to the defendant. Henderson says that he had no moonshine or any still. Hannah says that he never offered to sell any liquor to the defendant. But in the trunk of the defendant, in the front room of that house, there we have the liquor, according to his own admission—ten or twelve quarts of it, I believe he said. Henderson and Gordon say that the colored woman, Mrs. Drake, sold them liquor when they went over to her house to have her make them dinner.

Now, gentlemen of the jury, that is the evidence; that is the case for you. It is for you to review the facts and circumstances, to take the evidence and weigh it, and to determine where the truth lies, in your judgment, and to render a verdict accordingly. If your judgment is that the defendant is proven guilty after you have reviewed the evidence, beyond a reasonable doubt, it is your duty to convict him; if, on the other hand, you believe that he is not so proven guilty, it is your duty to acquit him.

When you retire to your jury-room, you should proceed by selecting one of your number foreman, and when you agree, he should sign your verdict.

It takes all twelve of your number to agree upon any verdict in this case. Any exceptions?

Mr. MURPHY.—If your Honor please, the defendant desires to except to that portion of your Honor's instructions in which you commented upon the Volstead Law, and particularly that portion in which you state that that law is being violated more than any other law now is. Defendant further [108] desires to except to your Honor's comments on the

Volstead Law to the effect that violations of it are breaking down the morale of the people and the general observance of law, and that there is a spirit not to enforce that law. We further except to that portion of your charge wherein you comment upon the fact and mention the fact that Vic Smith was the agent of the defendant, because I do not believe the same was warranted or justified by the evidence.

The COURT.—I don't know whether you misapprehended my statement. Gentlemen of the jury, the Court has not told you that Smith was the agent of the defendant; that was not the intention of the Court. I say that it is an inference you may ask yourselves whether it is not proper to draw, in view of all the circumstances disclosed in the case. Counsel's exception to the instructions given will stand overruled, and an exception will be noted.

Whereupon bailiffs were sworn to take charge of the jury, and the jury retired to deliberate upon their verdict. [109]

Thereupon the jury retired to consider their verdict and thereafter on the said 12th day of July, 1921, returned into court with their verdict, which was duly received and filed herein.

Thereafter, upon motion of counsel for defendant, the Court, for good cause shown, granted defendant ten days in addition to the time allowed by law in which to prepare and serve his bill of exceptions herein.

Wherefore said defendant now presents the foregoing as and for his bill of exceptions herein and respectfully moves the Court that the same may be

settled, signed and allowed by the Court as a bill of exceptions of the evidence, introduced on the trial of said cause, and the objections and exceptions to said evidence, the instructions of the Court to the jury and the defendant's objections and exceptions to said instructions.

To Hon. John L. Slattery, United States Attorney
for the District of Montana:

Please take notice that the foregoing is the bill of exceptions of the defendant, J. W. Willis, in the above-entitled action, proposed and submitted by said defendant.

LESTER LOBLE,
McINTIRE & MURPHY,
Attorneys for Defendant. [110]

Service of the foregoing bill of exceptions and receipt of a copy thereof this 1st day of August, 1921, is hereby admitted and acknowledged.

JOHN L. SLATTERY,
United States Attorney for the District of Montana.

RONALD HIGGINS,
Assistant U. S. Attorney for the District of Montana.

Certificate of Judge to Bill of Exceptions.

The foregoing bill of exceptions, having been duly served and presented for settlement within the time allowed by law and the order of this Court extending the time therefor, the same is hereby settled, allowed, approved and signed and certified as true and correct and contains in substance all of the evidence intro-

duced on the trial of said cause, together with the objections to the admission of such testimony, the rulings of the Court thereon and the exceptions of counsel thereto, together with the instructions of the Court as given to the jury and the exceptions taken to said instructions by defendant, and the same is hereby ordered entered in said cause as a part of the record thereof.

Dated this 11th day of August, 1921.

BOURQUIN,

Judge United States District Court for the District
of Montana.

Filed August 11, 1921. C. R. Garlow, Clerk.
[111]

Thereafter, on August 1, 1921, praecipe for transcript of record was filed herein, in the words and figures following, to wit:

In the District Court of the United States, for the
District of Montana.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

J. W. WILLIS,

Defendant.

Praecipe for Transcript of Record.

To C. R. Garlow, Clerk of the Above-entitled Court:

You will please make up the transcript on writ of error of the above-named defendant and plaintiff in

error herein taking care that the same is a true and complete record, containing in itself and not by reference all papers and other proceedings which are necessary to the hearing in the United States Circuit Court of Appeals for the Ninth Circuit, and to that end including therein:

1. The judgment-roll in the above-entitled cause, including the information, clerk's minute entry of the defendant's arraignment and plea; minutes of the court during the trial of said cause; the verdict of the jury; the judgment.

2. Bill of exceptions.

3. Petition for writ of error.

4. Assignment of errors.

5. Order allowing writ of error.

6. Bond of defendant.

7. Writ of error.

8. Citation on writ of error.

9. Answer of court to writ of error.

10. Clerk's certificate.

And all other papers and documents necessary to a complete [112] record in said writ of error.

Dated this 30th day of July, 1921.

LESTER H. LOBLE,

McINTIRE & MURPHY,

Attorneys for Defendant.

Due service of within praecipe and receipt of copy thereof this 1st day of August, 1921, is hereby admitted and acknowledged.

JOHN L. SLATTERY,

U. S. Attorney, District of Montana,

Filed August 1st, 1921. C. R. Garlow, Clerk.
[113]

Certificate of Clerk U. S. District Court to Transcript of Record.

United States of America,
District of Montana,—ss.

I, C. R. Garlow, Clerk of the United States District Court for the District of Montana, do hereby certify and return to the Honorable, the United States Circuit Court of Appeals for the Ninth Circuit, that the foregoing volume, consisting of 114 pages, numbered consecutively from 1 to 114 inclusive, is a full, true and correct transcript of the record and all proceedings had in said cause required to be incorporated in the record on appeal therein by the praecipe of the plaintiff in error, and of the whole thereof, as appears from the original records and files of said court in my custody as such clerk; and I do further certify and return that I have annexed to said transcript and included within said pages the original citation and writ of error issued in said cause.

I further certify that the costs of the transcript of record amount to the sum of Forty-eight & 05/100 Dollars (\$48.05), and have been paid by the plaintiff in error.

In witness whereof, I have hereunto set my hand

and affixed the seal of said court, at Helena, Montana, this 18th day of August, A. D. 1921.

[Seal]

C. R. GARLOW,
Clerk.

By H. H. Walker,
Deputy. [114]

[Endorsed]: No. 3755. United States Circuit Court of Appeals for the Ninth Circuit. J. W. Willis, Plaintiff in Error, vs. The United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the District of Montana.

Filed August 22, 1921.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

